

REPORT  
2025

A Human Rights  
Perspective on the Multi-faceted  
**Right (Not) to Believe in Türkiye**

**Report 2025**

A Human Rights  
Perspective on the Multi-faceted  
**Right (Not) to Believe in Türkiye**



A Human Rights Perspective on the Multi-faceted Right (Not) to Believe in Türkiye

*Norwegian Helsinki Committee's Freedom of Belief Initiative*

**Authors:** Dr. Mine Yıldırım, Rümeyşa Çamdereli, Prof. Dr. Tolga Şirin

**Project team:** Dr. Mine Yıldırım, Funda Tekin

**Translation:** Gül Tekin (Chapters: "Executive summary", "The right (not) to believe", "The right (not) to believe in education", "Protection of freedom of expression in the context of freedom of religion or belief")

**Proofreader:** K. B. Çolakoğlu

**Design:** Çağrı Karadağ

**Editorial coordinator:** Funda Tekin

**Cover photo:** Canva AI tool

**Publication date:** February 2025

**Norwegian Helsinki Committee** (NHC) is an Oslo-based human rights organization established in 1977 that works internationally to strengthen the protection of human rights in practice. To this end the NHC's activities include monitoring, reporting, human rights education and supporting civil society and democratic structures. The NHC's work is based on the human rights instruments adopted in the context of the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe.

**Freedom of Belief Initiative** (FoBI), has promoted freedom of thought, conscience, and religion as a fundamental human right since 2011. The Initiative's activities include monitoring, documentation, reporting, making policy recommendations, and advocacy. FoBI also works on combatting religion or belief-based hate crimes by monitoring and reporting on these as well as working on capacity building and awareness-raising activities.

*The creation of this report would not have been possible without the efforts and support of many. We sincerely thank everyone who contributed to the process.*

*This report has been produced with the support of the European Endowment for Democracy (EED). Its contents do not necessarily reflect the official opinion of EED. Responsibility for the information and views expressed in this publication lies entirely with the authors.*

[www.inancozgurlugugirisimi.org](http://www.inancozgurlugugirisimi.org)

[inancozgurlugu.info@gmail.com](mailto:inancozgurlugu.info@gmail.com)

**Twitter:** [/inancozgurlugu](https://twitter.com/inancozgurlugu)

**Instagram:** [/inancozgurlugugirisimi](https://www.instagram.com/inancozgurlugugirisimi)

**Facebook:** [/inancozgurlugugirisimi](https://www.facebook.com/inancozgurlugugirisimi)

**Youtube:** [@inancozgurlugu](https://www.youtube.com/@inancozgurlugu)

**LinkedIn:** [@inancozgurlugu](https://www.linkedin.com/company/inancozgurlugu)

**Dr. Mine Yıldırım** is an activist researcher and the founder and coordinator of the Freedom of Belief Initiative. She serves as a senior advisor on Türkiye and freedom of religion or belief at the NHC. She completed her PhD at ABo Akademi University Institute for Human Rights in Finland. Her book, *The Collective Dimension of Freedom of Religion or Belief – A Case Study on Turkey*, was published by Routledge in 2017. The Turkish translation of the book was published by Istanbul Bilgi University. She holds an M.A. degree in Human Rights and Civil Liberties from the Faculty of Law from Leicester University, UK and a BA degree in International Relations from Marmara University in Türkiye. Yıldırım has participated as a researcher in national and international projects. In 2021, she authored the report *Strengthening the Protection of Freedom of Religion or Belief in Western Balkans: A Roadmap for Parliamentarians*. She is the co-recipient of the 2016 Stefanus Prize for her work in the field of freedom of religion or belief. She served as a member of the OSCE/ODIHR Panel of Experts on Freedom of Religion or Belief between 2019-2022. She is also the author of many publications in the field of freedom of religion or belief.

**Rümeysa Çamdereli** graduated from Kabataş Erkek High School in 2006 and earned a degree in Computer Engineering from Boğaziçi University in 2013. In 2019, she completed her master's degree in Women's Studies at Istanbul University. She identifies as a Muslim, feminist, musician, and mother. She has been involved in various organisations, including the *Kadına Şiddete Karşı Müslümanlar İnisyatifi* (Initiative of Muslims Against Violence Towards Women) and is among the founders of *Kadınlar Camilerde* (The Women in Mosques Platform), Reçel Blog, and Havle Women's Association. Since 2015, she has been working at the YADA Foundation, where she currently serves as the research director.

**Prof. Dr. Tolga Şirin** completed his undergraduate and graduate education at Marmara University. He lectures on constitutional law, law of liberties, constitutional complaint, constitution making processes, freedom of expression and the right to freedom and security at the same university. He is a visiting professor at the Chair of Comparative Public Law at Humboldt University. Previously, he served as a board member of the Human Rights Center of the Istanbul Bar Association and the Constitutional Law Studies Association. He is a member of the editorial board of the *Journal of Constitutional Law* and national consultant for various human rights projects of the Council of Europe. He carried out studies at Birkbeck University after his undergraduate education, as a TÜBİTAK fellow during his doctorate and after his doctorate, as a fellow of Raoul Wallenberg Institute, at the University of Cologne. He has been writing weekly articles on T24 news site.

## Abbreviations

<b>AYM</b>	Turkish Constitutional Court
<b>CEDAW</b>	Convention on the Elimination of All Kinds of Discrimination Against Women
<b>ÇEDES</b>	"I Protect My Environment, I Uphold My Values" Project (Çevreme Duyarlıyım Değerlerime Sahip Çıkıyorum)
<b>Committee</b>	Human Rights Committee
<b>DİB</b>	Directorate of Religious Affairs'
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>GSB</b>	Ministry of Youth and Sports
<b>HBÖGM</b>	Directorate General for Lifelong Learning
<b>HRC</b>	Human Rights Council
<b>İBB</b>	Istanbul Metropolitan Municipality
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>MEB</b>	Ministry of National Education
<b>OSCE/ODIHR</b>	Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights
<b>RCE</b>	Religious Culture and Ethics
<b>RTÜK</b>	Radio and Television Supreme Council
<b>TCK</b>	Turkish Penal Code
<b>UN</b>	United Nations
<b>UNCRC</b>	UN Convention on the Rights of a Child

# Table of contents



<b>Executive summary</b> .....	<b>7</b>
<b>1. The right (not) to believe</b> .....	<b>13</b>
1.1 International law.....	13
1.2 National legislation.....	16
1.3 The right to hold a religion or belief of one's own choice.....	19
1.3.1 Freedom to adopt, not to adopt and change religion or belief.....	19
1.3.2 The right to be free from coercion to act against one's conscience and beliefs.....	21
1.3.3 Religion field in population register.....	23
1.3.4 Right to burial.....	24
<b>2. The right (not) to believe in education</b> .....	<b>27</b>
2.1 Introduction and legal framework.....	27
2.2 Mandatory courses on religious culture and ethics.....	30
2.3 I Protect My Environment, I Uphold My Values (ÇEDES) Protocol.....	35
2.4 The MEB and its collaborations with various foundations.....	37
<b>3. Freedom from coercion: Religious pressure and violence</b> .....	<b>40</b>
3.1 Introduction.....	40
3.2 Freedom from coercion in international human rights law.....	42
3.3 National legal framework.....	47
3.4. Freedom from coercion that would impair one's right to have or practice a religion or belief.....	51
3.4.1 Coercion in relation to religious clothing: The removal and use of the headscarf.....	51
3.4.2 Coercion to practise religion in the context of religious community houses and dormitories.....	54
3.5 Concluding remarks and recommendations.....	58
<b>4. Protection of freedom of expression in the context of freedom of religion or belief</b> .....	<b>63</b>
4.1 Introduction and methodology.....	63
4.2 Conceptual clarifications.....	63
4.2.1 Freedom of expression.....	63
4.2.2 Freedom of religion or belief.....	64
4.3 International law.....	67
4.4 National law.....	71
4.4.1 RTÜK decisions.....	71
4.4.2 Rulings of the Council of State.....	75
4.4.3 Rulings of the Court of Cassation.....	78
4.4.4 Rulings of the Constitutional Court.....	81
4.4.5 Investigations and judicial harassment.....	83
4.5 Conclusion.....	85

EXECUTIVE SUMMARY



## Executive summary

The right to freedom of thought, conscience, and religion or belief is a fundamental human right for both believers and non-believers alike. Enshrined in key international human rights treaties, this freedom is recognised in the case law of the European Court of Human Rights (ECtHR) as a key pillar of a "democratic society". In its religious dimension, this right is essential for shaping the identity and world-view of believers. At the same time, it equally safeguards the right to reject both religion and belief.<sup>1</sup> For this reason, it is just as significant for atheists, agnostics, sceptics, and the religiously indifferent.

The report, **A Human Rights Perspective on the Multi-faceted Right (Not) to Believe in Türkiye**, offers a comprehensive examination of the freedoms to believe, not to believe, or to believe in "non-mainstream" doctrines, and includes the experiences of atheists, agnostics, sceptics, and the religiously indifferent. The assumption that Türkiye is 99% Muslim and a homogeneous society in terms of religion or belief often goes unquestioned. However, research reveals considerable diversity within society, both in terms of religious or belief affiliation and practices. There are various dynamics that influence the experiences of non-believers or those whose beliefs diverge from the "mainstream". Türkiye's international human rights obligations<sup>2</sup> and national legislation necessitate comprehensive protection for freedom of thought, conscience, religion, or belief. Nevertheless, individuals' freedom to hold different beliefs or not to believe can be subject to interference at various stages and in different areas of life. These forms of interference extend to population registry records, education, various stages of the employment process, social interactions through expression or participation in social and political life, family life, marriage, parenthood, and burial practices. Individuals may also face discrimination for their differing beliefs or for choosing not to believe, exposing them to hatred, intolerance, and hostility within their families and social communities. Discrimination and victimisation can be exasperated intersectionally, influenced by individuals' protected characteristics such as ethnicity, gender, sexual orientation, refugee or migration status, and age.

The principle of secularism, firmly enshrined in the Constitution, is a cornerstone of critical importance. Secularism requires the state to remain neutral in matters of religion or belief. However, the state's pervasive and profound involvement in Islamic and other religious or belief-related matters has led to significant interference with the freedoms of both believers and non-believers. The report, ["An Appeal to Move Forward from Aspirations to Actions – Monitoring Report on the Right to Freedom of Religion or Belief in Turkey"](#) provides a comprehensive overview of

1 ECtHR, *Kokkinakis v. Greece*, 1993, para. 31; ECtHR *Buscarini and Others v. San Marino* [GC], 1999, para. 34.

2 Türkiye ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 23 September 2003; the European Convention on Human Rights on 18 May 1954; and the European Social Charter on 24 November 1989.



the deep-rooted issues surrounding freedom of religion or belief in Türkiye and the steps necessary to ensure compliance with international human rights standards.

The sociological and political context of freedom not to believe in Türkiye continues to be shaped by a complex interplay of history, politics, law, and social attitudes:

- Türkiye's international and national legal frameworks include provisions guaranteeing an individual's right to have, change, or not have a religion or belief. However, deep-rooted and pervasive challenges persist in the practical implementation of these protections. These often manifest as systemic barriers, societal pressures, and institutional practices that undermine the effective exercise of these rights. For example, individuals who espouse non-religious beliefs or philosophical views that differ from mainstream religious teachings and practices, or who hold non-religious beliefs or philosophical views, frequently report facing discrimination, stigmatization and exclusion, and often feel compelled to practise self-censorship.
- While changing one's religion is not criminalised in Türkiye, individuals who adopt a religion other than Islam, or who adopt non-religious beliefs or philosophical views, encounter societal challenges that greatly undermine their freedom of religion or belief.
- Despite the ECtHR ruling that mandatory or optional religious designation in population registers or identity cards violates the right not to disclose one's religion, the religion field in population registers remains in place.
- The right to conscientious objection is protected within the framework of the right to freedom of thought, conscience and religion or belief. However, despite this absolute protection and the decisions of international human rights monitoring mechanisms such as the ECtHR concerning Türkiye, the right to conscientious objection remains unrecognised.
- Funerary customs represent an essential aspect of religious or belief practice and fall within the scope of the right to manifest one's religion or belief. However, atheists' requests for cremation are *de facto* obstructed, despite the absence of a legal barrier.
- The encompassing educational policies and practices designed to promote Turkish nationalism and "national and spiritual (*manevi*) values" rooted in Sunni Islam through national education, severely limit the space for pluralism and the freedoms of thought, conscience, religion, or belief. Despite rulings by the ECtHR and a Constitutional Court (AYM) finding that compulsory religious culture and ethics (RCE) courses are incompatible with European Convention on Human Rights (ECHR) standards, the courses remain part of mandatory national curriculum, with limited and discriminatory exemption mechanisms. The activities carried out within the scope of the *Çevreme Duyarlıyım Değerlerime Sahip Çıkıyorum* (I Protect My Environment, I Uphold My Values – ÇEDES) project and protocols with the Ministry of National Education (MEB) and various foundations, raise significant concerns about the principle of state neutrality regarding religions and beliefs, as well as the freedom of thought, conscience, and religion or belief.

- Freedom from coercion which would impair an individual's freedom to have or to adopt a religion or belief of one's choice can also be infringed upon within religious or belief communities. Protection against such coercion requires states to exercise vigilance in preventing its occurrence, particularly within institutional settings where power imbalances may make individuals more vulnerable. In particular, multi-faceted measures must be taken to safeguard vulnerable groups such as women and children.
- Anyone can be a perpetrator of religious coercion, pressure and violence. Experiences of coercion in *tarikats* and *cemaats* dormitories and residential houses reveal significant gaps in protecting vulnerable individuals, particularly children and young adults. The frequent downplaying of such incidents as isolated or rare by authorities prevents their prevalence and systemic nature from being adequately addressed.
- To address these issues, religious violence and coercion in dormitories and religious community housing must be explicitly recognised as a distinct challenge requiring urgent policy discussion and formulation. Accountability and transparency are essential to dismantle the environments that enable coercion.
- The space for freedom is further constrained by the criminalisation of critical discourse against Islam or institutions viewed as being associated with it. Such dynamics disproportionately impact non-believers and those with beliefs differing from "the mainstream", eroding the foundations of a pluralistic society and restricting the right to freely adopt, change, or reject a religion or belief.
- The protection of religious feelings through criminal legislation lags behind international standards. In Türkiye, criticism directed at religion, or elements and practices that are emotionally sensitive to affiliated believers, are sometimes subject to criminal sanctions even in cases where they do not escalate into hate speech or present an explicit, imminent threat to public peace. In particular, the application of Article 216, paragraph 3, of the Turkish Criminal Code (TCK) exerts a chilling effect on the expression of criticism of religion.
- Moreover, the practices of the Radio and Television Supreme Council (RTÜK) are often deemed arbitrary, diverging significantly from international human rights norms, and conducive to censorship.
- While the decisions of the Council of State and the Court of Cassation are not as problematic as those of the RTÜK, and their principled findings appear appropriate, deviations from mainstream jurisprudence in certain individual cases have created a legal minefield.
- The AYM, despite issuing rulings that align most closely with international human rights standards, also mirrors the ECtHR's controversial stance on the criticism of religion within its own jurisprudence.
- One of the most pressing issues in Türkiye today is the ease with which all forms of seeming criticism of religion are subjected to investigation or

prosecution. Even when non-prosecution or acquittal verdicts are issued, these proceedings often amount to what can be characterised as "judicial harassment".

The current report begins by examining key issues such as the freedom to adopt or reject a religion or belief, the right to be free from coercion to act against one's conscience and beliefs, the declaration of religious affiliation in the population registers, and the right to burial. The second chapter examines these freedoms in the context of education. The third chapter aims to explore, from a human rights perspective, freedom from coercion which would impair an individual's freedom to have or to adopt a religion or belief of one's choice. The final chapter analyses violations that arise at the intersection of freedom of religion or belief and freedom of expression. Each chapter includes recommendations for steps to be taken to align legislation and practice with international human rights standards.



### Diversity of beliefs in Türkiye and the perception of secularism and freedom

In Türkiye, the effective protection of the right to believe in "non-mainstream" doctrines or not to believe is essential for preserving the country's diversity of beliefs and ensuring coexistence while maintaining this diversity. The assumption that Türkiye is 99% Muslim and a homogeneous society in terms of religion or belief often goes unquestioned. However, research reveals that there is wide diversity in society in terms of both religious or belief affiliation and practices. According to the findings of the recently published survey on "[Faith and Religiosity in Turkey](#)", 5.7% of the respondents either "do not believe in God" or identify as agnostics or deists.<sup>3</sup> This percentage rises to 11% within the 18-24 age group, with no significant difference between men and women. Meanwhile, 85.7% of the respondents express a belief in God with no doubts about it. In terms of sect affiliation, more than half of the respondents (62%) identify with the Hanafi school, 9% identify with the Shafii school, and 3.1% identify as Alevi rather than Sunni. Approximately one-quarter of the respondents either do not associate with a particular Muslim group (15.1%) or preferred not to answer this question (9.6%).

The survey also reveals varying views on how religious practices align with secularism, and on the compatibility of constitutional provisions with the Quran. 73% of respondents either agree or strongly agree with the statement, "I believe that religion can be easily practised in a secular country". In contrast, 13% of respondents disagree or strongly disagree with this statement. Endorsement of secularism is more prevalent among university students and those living in urban areas. Approximately half (47%) of respondents either agree or strongly agree with the statement, "No provision in the Constitution should contradict the Quran", while 33% disagree or strongly disagree, and 21% neither agree nor disagree.

Regarding freedom of religion or belief and related freedoms, the majority of re-

3 Z. Nişancı, "[Faith and Religiosity in Turkey](#)", International Institute for Islamic Thought and Mahya Publishing, 2023, p. 29. This rate of 5.7% largely coincides with the 6% finding in the "[If Turkey Were 100 People Research](#)" conducted by KONDA in 2022.

spondents (83%) agree or strongly agree with the statement, "Religious Muslims in Türkiye can freely practice their religion". On the other hand, 7% of the respondents disagree or strongly disagree with this statement, while 10% neither agree nor disagree.

64% of respondents agree with the statement, "Secular people in Türkiye can live their lives freely", while 22% express disagreement or strong disagreement, and 14% do not express an opinion.

The statements above regarding religious Muslims and secular people do not necessarily reflect opposing perceptions. However, comparing the results reveals a widespread belief that religious people in Türkiye enjoy more freedom to practise their beliefs than secular people do in maintaining their lifestyles. Additionally, compared to men, women perceive that secular individuals face greater limitations in upholding their lifestyles. Among men, 69% agree with the statement, "Secular people can live their lives freely in Türkiye", while only 60% of women concur. The percentage of men who "disagree" or "strongly disagree" with this statement is 18%, while the corresponding rate for women is 25%. In contrast, approximately half (49%) of the individuals in the 18-24 age group agree or strongly agree with the statement "Secular people can live their lives freely in Türkiye".

According to the same survey, the identity categories that respondents reported feeling the least affinity to were atheist (4%), deist (8%), and Alevi (9%), respectively.



# 1. The right (not) to believe

This chapter is largely based on information sources that were analysed through desk research. The primary sources in this context consist of key human rights instruments on freedom of thought, conscience and religion or belief, as well as the interpretations and decisions of the bodies authorised to interpret them, relevant national legislation, accessible national court decisions, reports published by civil society organisations in Türkiye in recent years, and sources accessed through media review to identify developments reflected in the press. Semi-structured interviews with various stakeholders and experts were also conducted to address knowledge gaps.

## 1.1 International law

**International human rights law guarantees the right to freedom of thought, conscience, and religion, protecting everyone's right to believe or not to believe.** The United Nations (UN) Universal Declaration of Human Rights and Article 18 of the UN International Covenant on Civil and Political Rights (ICCPR) safeguard everyone's freedom to adopt, change, or reject a religion or belief, as well as their right to manifest these in worship, practice, observance, and teaching.<sup>4</sup> This right, in its internal aspect, is absolute and cannot be restricted under any circumstances. Similarly, Article 9 of the European Convention on Human Rights (ECHR) aligns with the scope and standards of the UN legal framework. As a result, the ECHR imposes both positive and negative obligations on states, including the duty to protect the right not to be subjected to coercion as stated in the ICCPR below.

### Article 18 of the ICCPR:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one may be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the

<sup>4</sup> ICCPR, Article 18.

religious and moral education of their children in conformity with their own convictions.

In its General Comment No. 22 on Article 18, the UN Human Rights Committee (the Committee) emphasises that Article 18 **protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.**<sup>5</sup> Furthermore, the Committee underlines that this article distinguishes between freedom of thought, conscience, religion or belief and freedom to manifest religion or belief. No limitations on freedom of thought and conscience or on the freedom to adopt a religion or belief are permitted. In accordance with Article 18 paragraph 2 and Article 17 (protection of private life), **no one shall be compelled to reveal his thoughts or adherence to a religion or belief.**<sup>6</sup> Similarly, in relation to Article 9 of the ECHR, the ECtHR underscores that **the right to hold any belief, whether religious or not, based on conscience, or to change one's religion or belief, is absolute and unconditional.** For example, the state cannot interfere with this right by imposing beliefs on individuals or through practices that involve coercing them to change their beliefs.<sup>7</sup>



### The case law of ECtHR<sup>8</sup>

Freedom of religion also involves certain negative rights, notably the freedom not to practise a religion or to manifest a belief.<sup>9</sup> This implies that the state cannot compel an individual to perform an act that could reasonably be interpreted as expressing affiliation with a particular religion. Accordingly, in one case, the ECtHR found that there had been a violation of Article 9 of the Convention because of a legal requirement for the applicants to swear an oath on the Gospels to exercise their parliamentary powers.<sup>10</sup>

The negative aspect of freedom to manifest one's religious beliefs also entails that individuals cannot be required to disclose their religious affiliation or beliefs. Furthermore, they cannot be compelled to adopt practices from which it might be inferred that they hold – or do not hold – such beliefs. State authorities must refrain from interfering with an individual's freedom of conscience by investigating or forcing them to disclose their religious beliefs.<sup>11</sup>

On the other hand, such interference can also be indirect. For example, when official documents issued by the State, such as an identity card or report card, include a field for religious affiliation, leaving it blank inevitably has a specific connotation. Specifically, in relation to identity cards, the Court has ruled that the indication of religion on such documents, whether obligatory or optional, is in itself incompatible with Article 9 of the Convention.<sup>12</sup> However, Article 9 does not guarantee a right to

5 UN Committee, General Comment No. 22, para. 2.

6 *Ibid.*, para. 3.

7 ECtHR, *Ivanova v. Bulgaria*, 12 September 2007.

8 ECtHR, "Guide on Article 9 of the European Convention on Human Rights", 2015.

9 ECtHR, *Alexandridis v. Greece*, 21 May 2008, para. 32.

10 ECtHR, *Buscarini and Others v. San Marino* [BD], 18 February 1999, para. 34 and 39.

11 See above 9, para. 38; ECtHR, *Dimitras and Others v. Greece*, 3 September 2010, para. 78.

12 ECtHR, *Sinan Işık v. Turkey*, 2 May 2010, para. 51, 52 and 60.

record one's religion on their identity card, even if the inclusion is optional.<sup>13</sup> The Court further rejected the argument that indicating religion in the population registers or on identity cards is necessary for demographic or statistical purposes, as such practices would necessarily involve legislation making it mandatory to declare one's religious beliefs.<sup>14</sup> In contrast, the ECtHR did not consider an employee's requirement to inform their employer in advance about religious duties in order to present them as a valid excuse – such as taking time off for Friday afternoon prayers at the mosque – to be an "obligation to reveal one's religious beliefs".<sup>15</sup>

In the following cases, the Court has found a violation of Article 9 of the Convention (either alone or in conjunction with Article 14 prohibiting discrimination):

- The case of *Alexandridis v. Greece* concerns a procedure that requires taking an oath of loyalty in court as a precondition for exercising the legal profession. This procedure was based on the presumption that the applicant was an Orthodox Christian and wished to take the religious oath. It was determined that requiring the applicant to reveal that they were not an Orthodox Christian in order to make a solemn declaration in lieu of a religious oath constituted a violation.<sup>16</sup>
- In other cases addressing the same issue as the *Alexandridis* case, similar violations were found, albeit in relation to individuals participating in criminal proceedings as witnesses, complainants, or suspects.<sup>17</sup>
- The case of *Grzelak v. Poland* involves a student who was exempted from religious courses due to the absence of an alternative ethics course, resulting in a dash ("-") being recorded in the "religion/ethics" field on all of the student's primary school report cards and diploma. The court found that the dash indicated the student had not taken either of the courses, thereby risking stigmatisation.<sup>18</sup>

In contrast, the ECtHR found no violation of Article 9 in the case of the indication "--" (two dashes) in the corresponding field on the applicant's income tax card, showing that he was not affiliated with any of the churches or religious organisations for which the state levied a church tax. The Court concluded that the document in question, intended solely for use by the employer and tax authorities, was not for public access, thus limiting the scope of the claimed interference.<sup>19</sup>

### **Conscientious objection: The right not to act contrary to one's conscience and convictions**

Article 9 does not explicitly mention the right to conscientious objection, whether

<sup>13</sup> ECtHR, *Sofianopoulos and Others v. Greece* (Judgment on the admissibility of the application), 12 December 2002.

<sup>14</sup> See above 12, para. 44.

<sup>15</sup> ECtHR, *X v. The United Kingdom* (Judgment on the admissibility of the application), 12 March 1981.

<sup>16</sup> ECtHR, *Alexandridis v. Greece*, 21 May 2008, para. 36-41.

<sup>17</sup> ECtHR, *Dimitras and Others v. Greece*, 3 September 2010; AIHM, *Dimitras and Others v. Greece* (No. 2), 3 February 2012; ECtHR *Dimitras and Others v. Greece* (No. 3), 8 April 2013.

<sup>18</sup> AIHM, *Grzelak/Polonya*, 22 Kasım 2010.

<sup>19</sup> ECtHR, *Wasmuth v. Germany*, 15 September 2011, para. 58-59.



in the military or civilian sphere. However, the Court has ruled that the protections under Article 9 apply, in principle, to opposition to military service, when it is motivated by a serious, insuperable conflict between compulsory service in the army and an individual's conscience or their sincere and deeply held religious or other beliefs. The issue of whether opposition to compulsory military service falls within the scope of Article 9 and, if it does, to what extent it can be assessed under this provision, varies depending on the specific circumstances of each case. For instance, the case *Bayatyan v. Armenia* involved an applicant who was a Jehovah's Witness and, as such, adhered to the belief that military service, even without bearing arms, should be avoided. The Court concluded that there had been a violation of Article 9, resulting from the conviction of the applicant as having evaded compulsory military service, given that no alternative civilian service was provided for by law.<sup>20</sup>

The Court has subsequently found violations of Article 9 in a series of cases, closely resembling that of *Bayatyan*, against Armenia and Türkiye.<sup>21</sup> In the case of *Feti Demirtaş* in particular, the Court ruled that the applicant had been convicted several times and having been discharged based on a medical report stating that he was suffering from adjustment disorder did not change the outcome. The ECtHR stated that this did not negate the applicant's status as a "victim". On the contrary, it determined that his psychological disorder had emerged during his military service, further exacerbating the respondent state's responsibility.<sup>22</sup>

The aforementioned cases all concerned conscientious objectors who were Jehovah's Witnesses. Additionally, the Court found violations of Article 9 in two separate cases involving pacifists who did not cite any religious beliefs. In these cases the ECtHR ruled that there was a violation due to the absence of an effective and accessible procedure within the Turkish legal system whereby the applicants might have ascertained whether they could claim conscientious objector status, focusing on the state's positive obligations.<sup>23</sup>

The Treaty of Lausanne also includes significant provisions aimed at protecting non-Muslim minorities in Türkiye.<sup>24</sup>

- **Türkiye should remove all reservations it has made to international human rights treaties.**
- **Türkiye should revise its national legislation to align it with international human rights norms and standards, making the necessary amendments to ensure full compliance.**

## 1.2 National legislation

The national legal framework for freedom of religion or belief in Türkiye is primarily founded on the principle of secularism, as enshrined in the 1982 Constitution,

<sup>20</sup> ECtHR, *Bayatyan v. Armenia* [GC], 7 July 2011, para. 110.

<sup>21</sup> ECtHR, *Bukharatyan v. Armenia*, 10 April 2012; ECtHR, *Tsaturyan v. Armenia*, 10 April 2012; ECtHR, *Ercep v. Turkey*, 22 February 2012; ECtHR, *Feti Demirtaş v. Turkey*, 17 April 2012; ECtHR, *Buldu and Others v. Turkey*, 3 September 2014.

<sup>22</sup> ECtHR, *Feti Demirtaş v. Turkey*, 17 April 2012, para. 73-77 and 113-114.

<sup>23</sup> ECtHR, *Savda v. Turkey*, 12 September 2012; ECtHR, *Tarhan v. Turkey*, 17 October 2012.

<sup>24</sup> Signed on July 24, 1923, the Lausanne Peace Treaty was an agreement between representatives of the British Empire, France, Italy, Japan, Greece, Romania, and the State of Slovenes, Croats and Serbs, along with the government of the recently established Turkish State.

and on Article 24 protecting freedom of religion and conscience. This principle of secularism, a defining characteristic of the Turkish Republic, is rooted in the Preamble and the provisions of Articles 2, 13, 14, 68, 81, 103, 136, and 174 of the Constitution. In these provisions, the principle of secularism defines the state's stance on religious beliefs. This principle maintains that "Individual choices in religious matters and the lifestyle shaped by them are outside the intervention of the state but under its protection."<sup>25</sup> By ensuring the protection of freedom of religion, conscience, and social diversity, the principle of secularism ensures an environment where individuals and communities can coexist peacefully, regardless of their beliefs.<sup>26</sup> The secular state offers protection to those who hold differing religious beliefs or no belief at all.

As outlined in the legislative intent of Article 2 of the Constitution, "secularism – which in no circumstances means irreligiosity – allows individuals to have a belief or sect of their own choice, to worship freely, and prevents them from being subject to discrimination due to their religious belief."<sup>27</sup> The state bears both negative and positive obligations to uphold this guarantee.

**Article 10 of the Constitution safeguards the principle of equality before the law:**

Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.

**Article 24 of the Constitution guarantees freedom of religion and conscience for all individuals:**

Everyone has the freedom of conscience, religious belief and conviction.

Acts of worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14.

No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.

Religious and moral education and instruction shall be conducted under state supervision and control. Instruction in religious culture and morals shall be one of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.

No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political interest or influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.

<sup>25</sup> AYM, K.T. 20.09.2012. E. 2012/65. K. 2012/128 (09/12/2021).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

**Article 15 of the Constitution, which governs restrictions on fundamental rights and freedoms, guarantees the protection of freedom of religion, conscience, thought, and opinion even in states of war and emergency:**

In times of war, mobilization, a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

Even under the circumstances indicated in the first paragraph, (...) no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them.

Furthermore, in accordance with **Article 90 of the Constitution**, duly ratified international human rights treaties supersede domestic.<sup>28</sup> In cases of conflict between domestic laws and international human rights treaties, the provisions of the latter prevail. However, this principle is not consistently applied or widely followed in practice.

**TCK Article 115:** Imposes criminal sanctions in response to forcing someone to practice or abandon a religion and obstructing the exercise of religious beliefs.

**TCK Article 216(3):** Stipulates that a person who publicly degrades the religious values of a section of the public shall be sentenced to imprisonment for a term of six months to one year, if the act is capable of disturbing public peace.

**Turkish Civil Code Article 368:** States that members of a household are subject to the household order while also recognising their individual freedoms, including those related to religious beliefs.

**Civil Registration Services Law Article 7:** Includes "religion" among the mandatory details recorded in the family register.

Overall, Türkiye has robust constitutional and legal safeguards, along with international obligations, to protect freedom of religion or belief. However, substantial legal and practical challenges persist in safeguarding the right not to believe. The necessary legislative changes concerning specific issues are outlined in the following sections.

- **National legislation and practice should be revised to ensure compliance with international human rights standards.**
- **The AYM should expedite the examination of pending individual applications concerning freedom of religion or belief to ensure adherence to international human rights norms.**
- **In cases of conflict between domestic law and international human rights treaties, national courts should consistently apply the provisions of international treaties in accordance with Article 90 of the Constitution.**

<sup>28</sup> Constitution of the Republic of Türkiye, Article 90.

## 1.3 The right to hold a religion or belief of one's own choice

### 1.3.1 Freedom to adopt, not to adopt and change religion or belief

The legal framework in Türkiye includes provisions guaranteeing an individual's right to have, change, or not to have a religion or belief. However, deep-rooted and pervasive challenges persist in the practical implementation of these protections. These challenges often manifest as systemic barriers, societal pressures, and institutional practices that undermine the effective exercise of these rights. For example, **individuals who espouse non-religious beliefs or philosophical views that differ from "mainstream" religious teaching and practice, or who espouse non-religious beliefs or philosophical views, frequently report facing discrimination, stigmatization and exclusion.** Religious identity and differences continue to hold significant importance in the public sphere. Consequently, individuals may attract undesirable attention, being subjected to scrutiny and interference or pressure and coercion. This discrepancy between legal safeguards and personal experiences highlights the ongoing need to align practice with international human rights law standards.

While conversion is not criminalised in Türkiye, individuals who adopt a religion other than Islam, or adopt non-religious beliefs or philosophical views encounter societal challenges that greatly undermine their freedom of religion or belief.

For example, although atheism is not considered a crime in Türkiye, atheists encounter both legal and *de facto* restrictions in various aspects of life. Not all atheists experience interference with their freedom of thought, conscience, religion, or belief in the same manner or degree. These interferences can vary depending on individuals' backgrounds.<sup>29</sup> For instance, in families with strong religious commitments and practices, individuals who question religion or identify as atheists may feel compelled to conceal their beliefs and engage in constant self-censorship. Once their atheism is exposed, they may face marginalization and potential exclusion from their families.<sup>30</sup> On the other hand, atheists raised in atheist families typically experience less interference, especially if they come from a higher socio-economic background. Since the stigma of being an atheist is often subtle, many atheists remain invisible in society. Consequently, the prevalence of "closeted atheists" is widely acknowledged.<sup>31</sup> This observation aligns with the data from the ["Faith and Religiosity in Turkey"](#) survey previously referenced.

Some atheists in Türkiye have organized within the Association of Atheism, which was founded in 2014.<sup>32</sup> The association's objectives include defending the rights of atheists and agnostics, as well as raising public awareness about atheism. The mere fact that it was possible for the association to be established and continues to exist is seen by many as an indication of freedom and social acceptance. The Association of Atheism provides an effective platform for atheists to unite in solidarity, seek legal and practical solutions to the challenges they face, and exchange ideas. While meet-up events offer a space for such interactions, it has been noted

<sup>29</sup> Interview with Teoman Malkoç, 28 November 2024.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> More information may be found at [Ateizm Derneği](#).

that women are less likely to participate than men.<sup>33</sup> The Association of Atheism also facilitates collective action among individuals for specific causes.

On the other hand, the association faces significant interferences. One example of this is the restriction on the right to demonstrate. Although the freedom to protest and demonstrate without prior permission is a fundamental right safeguarded by the Constitution, the association is not allowed to hold demonstrations or marches, with authorities citing security concerns and the need to maintain public order.<sup>34</sup> Another form of interference encountered by organized atheists is the prosecution of board members. Over the past five years, 17 lawsuits have been filed against these members, the majority of which are based on Article 216 of the TCK. While some cases resulted in acquittals, a notable number led to convictions and sentences.<sup>35</sup> The Chair of the Board of Directors of the Association of Atheism has pointed out that, in most of these instances, the complainants are the same individuals. This pattern suggests a systematic practice of surveillance and the judicialisation of dissenting discourse. Such practices can be characterised as judicial harassment, a tactic used to silence and intimidate human rights defenders. Judicial harassment, whether in the form of criminal charges, civil lawsuits, or administrative proceedings, seeks to intimidate or silence human rights defenders by dragging them into prolonged legal processes that disrupt their lives and prevent them from carrying out their work.<sup>36</sup>

Although conversion is not criminalised in Türkiye, individuals who convert to a religion other than Islam, particularly, face familial pressure, social exclusion, suspicion, and discrimination. In some instances, broader societal prejudices manifest as institutional discrimination, with such practices extending to areas such as employment and access to public services. These individuals also encounter significant barriers to expressing their religion or belief. These challenges are often deeply rooted in cultural and social norms that associate religious identity with social affiliation, loyalty, or national identity. In particular, followers of religions other than Islam may be stigmatized and marginalized as "foreigners". Furthermore, many restrictions on freedom of religion or belief persist, especially for Protestants, who represent a significant portion of those who, not being born into Christian families, have adopted Christianity by personal choice.<sup>37</sup> Moreover, the hate crimes they endure convey a powerful message that they are not regarded as equal members of society. In this regard, the Freedom of Belief Initiative's monitoring of hate crimes based on religion, belief, or non-belief revealed 126 hate crimes between 2020 and 2024. Of the 47 incidents recorded in 2023, 22 were hate crimes targeting Christians, with 14 of these specifically directed at Protestants.

These practices are not compatible with international human rights standards, such as Article 18 of the ICCPR, which guarantees the right to adopt, change, or renounce a religion or belief without coercion. The UN Human Rights Committee

---

33 See above 29. There could be various reasons for this situation, and further examination may help clarify the underlying causes.

34 Interview with Süleyman Karan, Chair of the Board of Directors of the Association of Atheism, 2024.

35 Data provided by the Association of Atheism.

36 For more information refer to [Article 19](#).

37 The Association of Protestant Churches, "Hak İhlalleri İzleme Raporu", 2023.

further underscores that freedom of religion or belief encompasses the right to manifest one's beliefs free from discrimination or negative consequences. In the Turkish context, these protections are undermined by weak enforcement mechanisms and lack of widespread societal recognition of the pluralistic nature of religious and belief identities. Addressing these systemic issues calls for both legal reforms and proactive measures to encourage social acceptance of diverse religious, non-religious, and philosophical beliefs.

- **Public authorities should implement preventive measures to fully safeguard the freedom of thought, conscience, and religion or belief for atheists, agnostics, and individuals practising religions or beliefs other than Islam.**
- **Authorities should also take proactive steps to identify issues related to freedom of religion or belief within families, religious or belief communities, and workplaces. In doing so, they should develop appropriate measures to address these issues from a multidimensional perspective and in various ways.**
- **The education system should be strengthened and bolstered through measures aimed at dismantling deeply ingrained prejudices against atheists, agnostics, and individuals affiliated with other religious or belief systems.**

### 1.3.2 The right to be free from coercion to act against one's conscience and beliefs

The right to conscientious objection to military service is protected within the scope of the right to freedom of thought, conscience and religion. As stated by the Human Rights Committee, "the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to exemption from compulsory military service if the latter cannot be reconciled with the individual's religion or beliefs. The right must not be impaired by coercion."<sup>38</sup>

Despite Türkiye's obligations under international human rights law, the right to conscientious objection to military service is not recognised.<sup>39</sup> Article 72 of the Constitution refers to national service without mandating it as military service. The compulsory nature of military service is regulated through the statuses of evasion and desertion, as well as the administrative and criminal punitive measures imposed on conscientious objectors under the Conscription Law and the Military Penal Code.<sup>40</sup> These laws do not include any reference to conscientious objection to military service or alternative civilian service.

The UN and Council of Europe human rights compliance control mechanisms have found Türkiye in violation of the right to freedom of religion or belief for not recognising the right to conscientious objection to military service. In *Atasoy and Sarkut v. Turkey*, the UN Human Rights Committee examined the complaints filed by two Jehovah's Witnesses who objected to the absence of an alternative service

<sup>38</sup> *Jong-nam Kim et al. v. The Republic of Korea*, CCPR/C/106/D/1786/2008, 1 February 2013, para. 7.4.

<sup>39</sup> For a comprehensive assessment of the right to conscientious objection in Türkiye, see: M. Yıldırım and H. Üçpınar, "Türkiye'de Askerlik Hizmetine Karşı Vicdani Ret", 2021.

<sup>40</sup> The Law No. 7179 on Conscription, dated 25 June 2019, published in the Official Gazette No. 30813 on 26 June 2019; and the Law on Military Penal Code No. 1632, dated 22 May 1930, published in the Official Gazette No. 1520 on 15 June 1930.

in Türkiye. In this context, the Committee concluded that the prosecution and subsequent sentences following the applicants' objection to military service constituted an infringement on their freedom of conscience which violated Article 18(1).<sup>41</sup> Furthermore, the ECtHR found violations of the right to freedom of thought, conscience, and religion, as well as the prohibition of inhuman or degrading treatment and the right to a fair trial, in several applications.<sup>42</sup>

The identification of conscientious objectors as deserters or evaders in official records, along with the criminal sanctions imposed due to these statuses, violates several human rights. The non-recognition of the right to conscientious objection also interferes with conscientious objectors' other rights, including the right to vote and be elected, freedom of movement, the right to education, and the freedom to work.

**In 2024, the Council of Europe Committee of Ministers adopted an *interim* resolution regarding the ECtHR's execution of four judgments on conscientious objection related to Türkiye.** The Committee expressed concern "that the first judgment in this group became final in 2006 and that, despite two *interim* resolutions adopted by the Committee in 2007 and 2009, and its repeated calls on the authorities, no concrete steps have been taken to introduce the legislative reforms necessary to protect the applicants and others in their situation from similar, continuous violations of their Convention rights."<sup>43</sup> It "strongly urged" the authorities to immediately take all necessary measures to end the violation of the applicants' rights under the Convention and to promptly adopt any legislative or other reforms necessary to prevent similar violations.<sup>44</sup> The government is required to provide the Committee of Ministers with information on the issue by March 2025 at the latest. However, at the writing of this report, publicly disclosed steps are yet to have been taken.

- **Conscientious objection to military service should be recognised as a constitutional right, without delay.**
- **Legislation on conscientious objection to military service should be drafted in compliance with international human rights law.**
- **An independent and impartial decision-making body should be established to examine conscientious objection claims.**
- **Special consideration should be given to the requirement not to discriminate against conscientious objectors based on their religion or belief.**
- **Steps should be taken to ensure that conscientious objectors who wish to perform alternative service are provided with this opportunity. A civilian alternative should be provided that is genuinely civilian in nature, non-deterrent, non-punitive, and non-discriminatory in effect.**
- **All criminal proceedings against conscientious objectors should be dismissed, and compensation should be provided.**

41 UN Committee, *Atasoy and Sarkut v. Turkey*, UN Doc CCPR/C/104/D/1853-1854/2008, 19 June 2012.

42 ECtHR, *Osman Murat Ülke v. Turkey*, No. 39437/98, 24 April 2006; ECtHR, *Feti Demirtaş v. Turkey*, No. 5260/07, 17 January 2012; ECtHR, *Erçep v. Turkey*, No. 5260/07, 22 February 2012; ECtHR, *Halil Savda v. Turkey*, No. 42730/05, 12 June 2012; ECtHR, *Mehmet Tarhan v. Turkey*, No. 9078/06, 17 July 2012.

43 Interim resolution of the Committee of Ministers of the Council of Europe in the Ülke group of cases, [CM/ResDH\(2024\)126](#), 13 June 2024.

44 *Ibid.*

- **Convictions of conscientious objectors for disobeying orders, desertion, or making public statements should be expunged from criminal records.**
- **The individual and general measures should be implemented in accordance with the decisions and opinions of the ECtHR and the UN Human Rights Committee regarding conscientious objection.**

### 1.3.3 Religion field in population register

**No one can be compelled to reveal their beliefs.**<sup>45</sup>

Until 2016, national identity cards in Türkiye included a designated field for religion. However, in its 2010 judgment on *Sinan Işık v. Turkey* case, the ECtHR ruled that requiring individuals to indicate their religion in civil registers or on identity cards, whether mandatory or optional, was incompatible with the right not to disclose one's religion. Following this ruling, a partial improvement was introduced, removing the religion field from the visible section of the new national identity cards.<sup>46</sup> This marked an important step toward aligning with human rights standards. Nevertheless, religious affiliation is still recorded in the chip embedded in the identity cards, and individuals can "optionally" select a religion or belief from a predefined list. This list offers only a limited selection and does not, for example, include atheism or agnosticism. Authorities have access to the religion information recorded in civil registers. Information on individuals' beliefs is considered "qualified personal data" in accordance with the Personal Data Protection Law. This data is supposed to be processed only with the explicit consent of the person concerned. However, in "situations stipulated by law", authorized institutions can process information on beliefs without the explicit consent of an individual.<sup>47</sup>

Identity cards are extensively used to access a broad range of human rights, such as healthcare and education. Therefore, the removal of the religion field from the visible part of identity cards is a positive step, as it helps eliminate the risk of discrimination and prevents individuals from being compelled to disclose their religion or beliefs. On the other hand, even though the religion field is recorded on the chip and individuals have the right to register it on a voluntary basis, the presence of a religion field on family registers and identity cards continues to pose the risk of discrimination. There is the potential for discrimination based on religion or belief, as public officials may be able to see if a religion other than Islam is recorded or if the field is left blank.

Atheists and agnostics cannot register their beliefs in the religion field and are only permitted to leave it blank. Yet, leaving this field blank may also expose individuals to discrimination, as it could be interpreted as an indication that they do not affiliate with Islam. Therefore, it remains questionable whether leaving the field blank can truly be considered a viable option.

Jewish and Christian students have the right to be exempt from the compulsory Religious Culture and Ethics (RCE) course. However, if the religion field on their identity

<sup>45</sup> UN Committee, General Comment No. 22, para. 3.; ECtHR, *Buscarini and others v. San Marino*; ECtHR, *Alexandridis v. Greece*, para. 38.

<sup>46</sup> ECtHR, *Sinan Işık v. Turkey*, App. No. 21924/05, 2 February 2010.

<sup>47</sup> Law No. 6698 on Personal Data Protection, Official Gazette, 29667, 7.4.2016, Article 6.



cards is left blank, they are unable to claim this exemption. On 3 February 2015, the Ministry of National Education's Directorate General of Religious Education instructed provincial governors that students enrolled in elementary and middle schools – with the exception of those attending schools for religious minorities – must have "Christian" or "Jewish" recorded in the religion field of their identity cards in order to be exempt from RCE courses.<sup>48</sup> As a result, Jewish and Christian students are unable to leave the religion field blank on their population registry, even if they wish to, as it would prevent them from proving their religious affiliation. Consequently, they face both the risk of discrimination and the dilemma of either declaring their religion or being compelled to take the RCE course.

The ECtHR's ruling in *Sinan Işık v. Turkey*, which determined that the mandatory or optional indication of religion in civil records or identity documents is incompatible with the right not to disclose one's religion, remains relevant.<sup>49</sup> Effective compliance with this judgment requires the complete removal of the religion field from personal records.

- **The religion field in civil registers should be removed.**
- **Until the field for religion is removed from official documents, individuals should be allowed to express their religion or belief in a manner of their choosing. For this to include world views such as atheism and agnosticism, they should not have to choose from a list of limited options.**
- **Christian and Jewish students wishing to exercise their right to exemption from the RCE course should not be forced to forfeit their equal right to leave the religion field of their identity documents blank. Their request for exemption should be sufficient for them to exercise this right.**

### 1.3.4 Right to burial

Funerary customs represent an essential aspect of religious practice and fall within the scope of the right to manifest one's religion.<sup>50</sup>

In Türkiye, municipalities are responsible for the allocation of cemeteries as well as the burial and transportation of the deceased.<sup>51</sup> The municipalities' responses to applications for cemetery allocation for individuals of different faiths vary across provinces.

An important issue for atheists relates to arrangements after death. In 2015 and 2016, 7,819 people signed a petition launched by the Association for Atheism, demanding that the Istanbul Metropolitan Municipality (İBB) establish a crematorium.<sup>52</sup> Despite this, the İBB has yet to take any action on the matter. However, in Türkiye, it remains *de facto* impossible for those wishing to be cremated after

48 General Directorate of Religious Education Circular, February 3, 2015.

49 ECtHR, *Sinan Işık v. Turkey*, App. No. 21924/05, 2 February 2010.

50 AİHM, *Johannische Kirche ve Peters/Almanya* (kabul edilebilirlik hakkında karar).

51 Law no. 1593 on Protection of Public Health, Article 20. Article 7(s) of the Law No. 5216 on Metropolitan Municipalities: "Designate cemetery areas, build, operate or cause to operate cemeteries, and provide burial services."

52 Sözcü, "Ateistler Kadir Topbaş'tan krematoryum istedi", 24 November 2015; Change.org, "Bir Krematoryum kurulsun", 26 February 2015.

death, rather than *de jure*.<sup>53</sup> In other words, there is no legal obstacle to opening a crematorium. Nevertheless, there is no crematorium allocated for public service in Türkiye. Cremation is permitted under Articles 224 and 225 of the 1930 Law on the Protection of Public Health. Those wishing to build a furnace for cremation, in compliance with health regulations, may apply to the relevant municipalities and begin construction upon project approval.<sup>54</sup> Municipalities are the designated bodies responsible for overseeing this process. The cremation procedure requires either the written request of the individual or the testimony of three witnesses who know this request.<sup>55</sup> For cremation to proceed, certain documents must be provided to the relevant municipality at least twenty-four hours in advance:

1. A report and burial license (burial certificate) issued by a physician who did not treat the deceased during their illness and has no connection to either the patient or the condition, certifying that the cause of death was natural.
2. A written declaration from the deceased expressing their wish for cremation after death, or a sworn statement from three witnesses attesting to this wish.
3. A document from the local police authorities certifying that the deceased's death was not a result of a criminal case.

The Law on Protection of Public Health also governs the storage of cremation ashes in designated areas of cemeteries.

Due to the lack of action by the state, individuals wishing for cremation are forced to have a prior arrangement to have their bodies sent abroad for the process, with the ashes subsequently returned to their families.<sup>56</sup> Additionally, a company based in Sivas manufactures and exports crematoria.<sup>57</sup>

→ **Municipalities should take the necessary measures to accommodate requests for cremation after death.**

---

53 S. Coşkun and N. Büken, "Kremasyonun Tarihiçesi ve Türkiye'de Kremasyon", IBAD Sosyal Bilimler Dergisi (8), 18 December 2020; Gazete Bilim, "Türkiye'de ölü yakma (kremasyon): Hukuken var, fiilen yok", 23 Kasım 2023.

54 See above 51, Article 224.

55 See above 51.

56 <https://koksalcenaze.com/krematoryum-hizmeti>

57 Indytürk, "Cenaze şirketleri yakılmak istenen cenazeyi Almanya'ya gönderip küllerini getiriyor", 18 November 2019.



## 2. The right (not) to believe in education

### 2.1 Introduction and legal framework

The child's freedom of thought, conscience, and religion or belief, as well as the right of parents and legal guardians to raise their children in accordance with their own philosophical or religious views, is increasingly subject to interference within the national education system as a result of Islam-oriented policies.<sup>58</sup> These policies include compulsory religious education through mandatory RCE courses, elective religion courses, the celebration of Islamic religious days in schools, allowing the expression of religion or belief exclusively through Islamic attire or symbols, facilitating attendance at Friday prayers, and collaborating with religious foundations.<sup>59</sup> Such practices interfere with the human rights of non-believers and those who consider these policies incompatible with their own beliefs or philosophical views. However, Türkiye's human rights obligations require the state to adhere to specific standards in exercising functions related to education. The system, which exhibits significant deficiencies in pluralism and impartiality, urgently requires reform to ensure equal treatment and inclusiveness for people of all faiths, including non-belief.

This chapter provides a brief overview of international and national legislation, compulsory RCE courses, the ÇEDES project, and the MEB's collaborations with religious foundations. Due to the scope of this report, not all the aforementioned interventions are analysed.<sup>60</sup>

In the UN context, Article 18 of the ICCPR sets forth key standards regarding states' obligations to protect freedom of religion or belief within the field of education. It should be noted that:

- The duty of states to safeguard students' freedom of thought, conscience, and religion or belief applies to all areas of education. Accordingly, students have the right to:
  - believe, change their religion or belief, or not believe;
  - not be compelled to reveal their religion or belief;
  - freedom from coercion to act against their thoughts, conscience, and beliefs.

<sup>58</sup> International human rights treaties refer to this right as the right of parents and legal guardians; however, for concision, this report will use "parents" in subsequent references.

<sup>59</sup> For a broader assessment of practices that enable manifestation of religion in schools, see: M. Yıldırım, "Okullarda Çoğulculuk ve İnanç Özgürlüğü Üzerine Hukuki Değerlendirme: Güvenceler ve Olanaklar", in: Ö. Genç, D. Taşkan, U. Tol and M. Yıldırım, "Eğitimde Çoğulculuk ve İnanç Özgürlüğü Yetişkinlerin ve Çocukların Gözünden Okullarda Din Dersleri ve Dinin Görünümleri", PODEM, 2017, p. 55.

<sup>60</sup> Obligations regarding the fundamental freedom of belief in the context of private religious schools, such as *madrasahs*, are explored further in Chapter 5.

- States are obliged to respect the right of parents to provide their children with religious and moral education in line with their own convictions.<sup>61</sup>
- States are not required to establish an education system that aligns with parents' beliefs.
- **When teaching about religions is based on the tenets of a particular faith, seeks to indoctrinate, or has the effect of reflecting the tenets of that faith, in other words, when education takes on a religious nature, parents are entitled to exclude their children from such activities.**<sup>62</sup>
- The general history of religions and ethics may be taught in public schools, provided it is presented in a neutral and objective manner.<sup>63</sup>
- However, religious instruction based on a particular religion or belief within these courses is incompatible with Article 18. In such cases, a non-discriminatory exemption system should be implemented, or alternative courses should be made available in accordance with parents' preferences.<sup>64</sup>

The UN Special Rapporteur on Freedom of Religion or Belief also underscores the need to distinguish between providing information about religions or beliefs and religious instruction.<sup>65</sup> The former involves teaching about the nature, practices, and diversity of religions, while the latter involves doctrines based on a particular religion or belief.<sup>66</sup> This distinction is crucial in schools where religious education often reflects the mainstream belief, potentially marginalising minority groups or individuals with differing views, religions, or beliefs. In this context, the Rapporteur highlights the need for safeguards, such as allowing religious or belief minorities to be exempted from religious education without facing any penalties and providing alternative courses for those who opt out. **Any practice that compels students to participate in religious education is incompatible with international human rights law, including the ICCPR, which guarantees the inalienable right to freedom of religion or belief.**

The Special Rapporteur notes the potential of private denominational schools in promoting pluralism by addressing educational needs based on religion or belief.<sup>67</sup> However, the state must ensure that these institutions do not restrict access to inclusive public education or monopolise educational opportunities in certain regions. Schools should also function as spaces for constructive dialogue, fostering mutual understanding between different communities and challenging negative stereotypes. The Rapporteur emphasises that schools, as places of learning and social development, must ensure that students are not subjected to coercion or pressure to conform to practices based on religion or belief.

61 ICCPR, Article 18(4).

62 OSCE/ODIHR, "Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools", 2007.

63 UN Human Rights Committee, General Comment No. 22, 30 July 1993, CCPR/C/21/Rev.1/Add.4.

64 *Ibid.*

65 Report of the UN Special Rapporteur on Freedom of Religion or Belief and School Education, A/HRC/16/53, 15 December 2010, para. 47-58. Also see: Human Rights Committee, App. No. 1155/2003, *Leirvåg v. Norway*, 3 November 2004, para. 14.6.

66 *Ibid.*, The Report on Freedom of Religion or Belief and School Education.

67 *Ibid.*

In the context of the school environment, the ECtHR emphasises that Article 9 of the ECHR safeguards individuals from religious indoctrination by the state.<sup>68</sup> The ICCPR guarantees are also applicable and binding within the ECHR framework. Additionally, Article 2 of Protocol No. 1 to the ECHR, imposes significant obligations on states in the field of education:

...In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.<sup>69</sup>

The Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), in its "Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools", underscores the importance of inclusive, non-doctrinal, and impartial approaches in developing curricula for teaching about religions.<sup>70</sup>

The provisions on the right to education and the purpose of education in the UN Convention on the Rights of the Child (UNCRC) are also both guiding and binding:

- **Article 28:** Protects the child's right to education.
- **Article 29:** The purposes of education include "the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin".

**In terms of national legislation, Article 24 of the Constitution differentiates between adults and children. The term "everyone" in Article 24(1) should be interpreted to include children. Both adults and children are entitled to "freedom of conscience, religious belief, and opinion".** In this context, the right not to be compelled to believe or not believe in any religion or belief, and not to be subjected to indoctrination, is an absolute right and cannot be restricted. Similarly, under Article 24(3), the child has the right not to be coerced "to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions". Necessary measures must be taken to safeguard this right in all areas of life, including within schools.

<sup>68</sup> *Angeleni v. Sweden* (decision on admissibility); *C.J., J.J. and E.J. v. Poland* (decision on admissibility).

<sup>69</sup> In its declaration to the Council of Europe on the ratification of the ECHR and Additional Protocol No. 1, Türkiye stated that Article 2 should not affect the provisions of the Law on the Unification of Education. This reservation indicates a reluctance to allow the establishment of private religious or minority schools. However, no such reservation exists concerning Article 18 of the ICCPR, which imposes a similar obligation.

<sup>70</sup> See above 62.

Teaching about religions and beliefs is subject to constitutional regulation. Accordingly, religious and moral education and instruction are carried out under the supervision and control of the state. The RCE course is among the mandatory courses in primary and secondary education. The use of the term "religious culture" as distinct from "religious education" suggests an intention to provide education about religious culture, drawing on various sources. However, in practice, these courses function as religious education. Other religious education and instruction are provided based on the requests of individuals or the legal representatives of minors. On the other hand, the AYM's interpretation of Article 24 of the Constitution aligns with Article 9 of the ECHR. Therefore, international human rights standards are decisive in interpreting the relevant provisions of the Constitution regarding education and instruction on religion. This is further reinforced by Article 90 of the Constitution, which grants precedence to international human rights treaties ratified by Türkiye.

The Turkish Civil Code grants parents the right to "determine the religious education of the child," while adults are free to choose their own religion.<sup>71</sup> However, the explicit provision allowing parents to choose their child's religion is incompatible with Article 12 of the CRC, Article 9 of the ECHR, and Article 18 of the ICCPR. Children have the right to adopt, change, or reject a religion or belief in accordance with their evolving capacities. The right to determine a child's religious education is often interpreted as granting parents the right to determine the child's religion, yet the law does not explicitly state this. It also stipulates that any contract restricting parental rights on this matter shall be invalid. In any case, the right to "determine" does not necessarily imply the right to raise a child strictly in accordance with one's own religious or philosophical beliefs. As a general provision, the same law requires parents to support their child in shaping their life in accordance with their degree of maturity. This means that parents should take the child's views into account on significant matters.<sup>72</sup> Thus, even under national law, parental discretion in determining a child's religious upbringing is neither absolute nor unlimited.

Article 12 of the Basic Law on National Education stipulates that "Secularism shall be the basis of Turkish national education. Religious culture and ethics shall be among the compulsory subjects taught in primary and upper secondary schools, and in schools of these levels."<sup>73</sup>

## 2.2 Mandatory courses on religious culture and ethics

The RCE course is one of the compulsory subjects in basic education, taught for two hours per week from 4th to 12th grade. The curriculum and textbooks have been the subject of rulings by the ECtHR, the AYM, and the Council of State, all of which found violations of parents' rights to raise their children in accordance with their religious or philosophical beliefs.<sup>74</sup> In response to the ECtHR ruling and in line with the ruling party's policy priorities, the curriculum and textbooks were amended

<sup>71</sup> Law No. 4721, Turkish Civil Code, 22 November 2001, Article 341.

<sup>72</sup> Turkish Civil Code, Article 339.

<sup>73</sup> Basic Law of National Education No. 1739 dated 14 June 1973.

<sup>74</sup> See above 59, M. Yıldırım, "Okullarda Çoğulculuk ve İnanç Özgürlüğü Üzerine Hukuki Değerlendirme: Güvenceler ve Olanaklar".

in the 2011-2012, 2018-2019, and 2024-2025 academic years.<sup>75</sup> The most recent revision, introduced as part of "The Century of Türkiye Education Model", was approved by the MEB's Board of Education and Discipline in May 2024 following a brief consultation process that had begun on April 26, 2024. It has since been gradually rolled out. This report does not analyse the RCE curriculum and textbooks used in the 2024-2025 academic year. **However, the new programme explicitly states that the "learning from religion" approach will be applied.<sup>76</sup> This approach does not provide an objective framework for teaching religious culture or different religions; rather, it pertains to the nature of religious education itself. As a result, the mandatory RCE curriculum and textbooks still require alignment with international law and constitutional standards. Until such alignment is achieved, the rights of children and parents to freedom of thought, conscience, and religion or belief will continue to be undermined – unless the right to an optional exemption is granted without delay.**



### Toledo Guiding Principles: The important distinction between learning from religion and learning about religions<sup>77</sup>

**Learning from religion** is concerned with developing students' reflection on and response to their own and others' experiences in the light of their learning about religion. It develops pupils' skills of application, interpretation and evaluation of what they learn about religion.

**Learning about religions** includes enquiry into, and investigation of, the nature of religions, their beliefs, teachings and ways of life, sources, practices and forms of expression. It covers students' knowledge and understanding of individual religions and how they relate to each other as well as the study of the nature and characteristics of religion. It includes the skills of interpretation, analysis and explanation. Pupils learn to communicate their knowledge and understanding using specialist vocabulary.

The ECtHR's *Hasan and Eylem Zengin and Mansur Yalçın and Others v. Turkey* judgments, concerning the violation of the rights of Alevi applicants' children in the context of the compulsory RCE course, contains important findings regarding these courses.<sup>78</sup> The ECtHR found that the content of the RCE course lacks objectivity and that the education system has structural issues in respecting parents' rights to raise their children according to their religious or philosophical beliefs. In this context, the ECtHR ruled that to prevent similar violations, urgent reforms regarding teaching about religions within schools should be implemented to ensure alignment with international human rights standards. **To this end, Türkiye should bring its education-**

<sup>75</sup> Board of Education and Discipline's Resolution No. 18, dated 19 January 2018.

<sup>76</sup> Ministry of National Education, "Din Kültürü Ahlak Bilgisi Dersi Öğretim Programı – İlkokul 1 ve Ortaokul 5,6,7,8.", p. 6. The current curriculum is not publicly available; however, the curriculum draft was accessed and reviewed when it was released for public access. Additionally, the MEB issued a circular to 81 provincial governors regarding "Textbooks in Private Schools". According to this directive, all schools will be required to use textbooks prepared in alignment with the MEB's Century of Türkiye Education Model.

<sup>77</sup> See above 62.

<sup>78</sup> ECtHR, *Hasan and Eylem Zengin v. Turkey*, App. No. 1448/04, 9 October 2007; *Mansur Yalçın and Others v. Turkey*, App. No. 21163/11, 16 September 2014.



al system and legislation into conformity with the ECHR.<sup>79</sup> Additionally, it should urgently establish a non-discriminatory exemption mechanism that does not require students or their parents to disclose their religious or philosophical beliefs.<sup>80</sup>

The AYM's decision in the case of *Hüseyin El and Nazlı Şirin El*, which concerned the RCE courses, also includes significant findings. In this case, the AYM ruled that the right of parents to demand respect for their religious and philosophical beliefs in education and training, guaranteed under Article 24(4) of the Constitution, was violated.<sup>81</sup> The AYM emphasised that education must reflect the character of "religious culture" and that religious education cannot be made compulsory in a secular state.<sup>82</sup> The court further stated that a secular state, "by definition, must refrain from establishing an official religion, should not endorse the superiority of any particular religion, and should not seek to legitimise its requirements through laws or other administrative acts".<sup>83</sup> Thus, in a secular state, education and instruction on a particular religion cannot be compulsory. The AYM did not extend this assessment to the current RCE curriculum. Therefore, despite the limited validity of the assessment regarding the current RCE curriculum and textbooks, the underlying principles remain valid and should be binding on the MEB.

The 2024–2028 Strategic Plan of the MEB introduces a substantial revision of its vision and core values. Accordingly, the new plan envisions an education system aimed at cultivating "generations that will build the Turkish Century".<sup>84</sup> In contrast, the 2019–2023 Strategic Plan emphasised raising "healthy and happy individuals ready for life". Notably, the new plan does not include principles such as human rights, democracy, scientific thinking, innovation, and professional ethics, which were present in the previous plan. Instead, new values have been introduced, including equality of opportunity, religion, morality and values, law and justice, and patriotism.<sup>85</sup> Furthermore, it is observed that the new plan places a stronger emphasis on "national, spiritual, and cultural values", with this focus consistently reflected in the assessment of needs and strategies for learning materials and educational processes across all grades and school types.<sup>86</sup>

As previously mentioned, the execution of the ECtHR judgments in the cases of *Mansur Yalçın and Others v. Turkey* and *Hasan and Eylem Zengin v. Turkey* requires the government to implement significant reforms within the education system. The Committee of Ministers of the Council of Europe reviewed the execution of these judgments at its meeting in June 2024 and adopted an *interim* resolution.<sup>87</sup> In this resolution, the Committee recalled that the issue had been pending before it since 2008 and:

<sup>79</sup> ECtHR, *Hasan and Eylem Zengin v. Turkey*, para. 84.

<sup>80</sup> ECtHR, *Mansur Yalçın and Others v. Turkey*, para. 76, 77 and 84.

<sup>81</sup> AYM, *Hüseyin El and Nazlı Şirin El*, App. No. 2014/15345, Judgment Date: 7 April 2022, Official Gazette date and no.: 28 July 2022, 31906.

<sup>82</sup> *Ibid.*, para. 19.

<sup>83</sup> *Ibid.*, para. 92.

<sup>84</sup> Directorate for Strategy Development of the MEB, The 2024-2028 Strategic Plan, 31 January 2024.

<sup>85</sup> Eğitim Reformu Girişimi, (Education Reform Initiative - ERG), "Eğitim İzleme Raporu", Kasım 2024.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Interim* resolution of the Committee of Ministers of the Council of Europe, [CM/ResDH\(2024\)125](#), Execution of the judgment in the case of *Mansur Yalçın and Others v. Turkey*.

- stated that, despite the Court's clear findings and the Committee's repeated calls, the RCE courses remain compulsory, with a very limited exemption procedure which is likely to subject pupils' parents to a heavy burden and to the necessity of disclosing their religious or philosophical convictions (...);
- noted that revised curriculum of the RCE courses cannot alleviate the need for appropriate options for the children of parents who have a religious or philosophical conviction other than that of Sunni Islam to opt out of compulsory religious education, without pupils' parents being obliged to disclose their religious or philosophical convictions;
- invited the authorities to provide information on the envisaged measures by the end of December 2024.

As of the time of the writing of this report, Türkiye has not yet provided any information to the Committee of Ministers.

### *Limited and discriminatory exemption right*

In cases where teaching about religions in schools assumes the character of religious instruction, an optional and non-discriminatory exemption system should be established in accordance with human rights law. A decision by the High Council of Education and Training in 1990 grants children from Christian and Jewish families the right to exemption from the RCE course.<sup>88</sup> The exemption mechanism from compulsory RCE courses in Türkiye raises numerous issues, including serious interference with the child's right to freedom of religion or belief and to participation. The following critical observations on the exemption mechanism highlight these concerns:

- **The exemption criteria are discriminatory:** Only Christian or Jewish students are eligible for exemption. Moreover, these students can only benefit from this exemption by disclosing their religious affiliation in their civil records. Other students, who do not declare affiliation with these religions, are not only denied this right but also compelled to participate in the course and achieve passing grades on the exams. Compulsory enrolment in these courses, which assume the character of religious instruction, exposes the child to conditions that may force them to act in a manner contrary to their freedom of thought, conscience, or religion.
- **The child's right not to be compelled to reveal their religion or belief is violated:** Disclosure of the child's religion or belief is mandatory for exemption from religious courses.
- **The child is excluded from the exemption application process:** The application process regarding the exemption does not allow the child to participate, despite the fact that it is the child's documented religious iden-

<sup>88</sup> The High Council of Education and Training's [decision](#), dated 9 July 1990: "Following the proposal by the Ministry of Education, pupils of Turkish nationality who belong to the Christian or Jewish religions and who attend primary and secondary schools, with the exception of schools for minorities, are not obliged to follow the classes in religious culture and ethics, provided they affirm their adherence to those religions. If, however, such pupils wish to attend such classes, they must submit a written request from their legal representative."

tification that is required. The parents are responsible for submitting the application and providing the documentation.

- **The inclusion of the term "exempt" on a report card creates the risk of discrimination:** Students who are exempt from RCE courses face the risk of being stigmatised whenever their records are reviewed throughout their academic lives and careers.
- **Exempt students are at risk of discrimination within the school environment:** Students exempted from the RCE course may often face questions, derogatory remarks, and discrimination from their peers or teachers, and are stigmatised, especially in public schools.
- **Lack of guidance system for exemption:** There are no established regulations or guidelines detailing the exemption process. This lack of direction makes the implementation, supervision, and monitoring of exemptions challenging. Additionally, there is no clear and foreseeable guidance for schools and students regarding where exempted students will be during classes and how they will utilise their time.
- **Potential academic disadvantages from exercising the exemption right:** Students exempted from the RCE courses may be subjected to unequal evaluation criteria, particularly concerning the high school entrance exam.

As previously noted, children whose civil records do not declare that they are Christian or Jewish are not allowed exemption from the compulsory RCE course. It is mandatory for the children of atheists, agnostics, Alevis, or parents who view participation in RCE courses as contrary to their conscience, to take the RCE course. This situation sometimes causes parents to seek alternative solutions to help their children avoid this obligation. In one case, a parent altered their child's religious affiliation in civil records to Christianity in order to secure an exemption.<sup>89</sup> The individual shared the following statement on social media: "I changed my religion because the MEB curriculum disregards secularism, science, and Atatürk, and due to the pressure of the compulsory religion course. Deism and atheism do not exempt children from the religion course. Only Christian and Jewish children can be exempt from the religion course." This post received numerous negative comments.<sup>90</sup>

- **The MEB should take immediate action to align the Turkish education system and domestic legislation with the ECHR, particularly by addressing the deficiencies in textbooks and exemption rules.**
- **Public authorities should promptly execute the ECtHR judgment in the case of *Mansur Yalçın and Others v. Turkey* in accordance with the Committee of Ministers' interim resolution.**
- **The MEB should take immediate steps to implement non-discriminatory exemptions.**
- **The MEB should review and revise its programs and practices to ensure the protection of the child's right to freedom of thought, conscience, and religion within the education system.**

89 Evrensel, "Çocuğunun Zorunlu Din Dersinden Muaf Olması için Hristiyan Oldu", 5 June 2024.

90 Interview with Bülent Sağış, "Bunlar Ateist programı", Ateist TV, July 2024.

### 2.3 I Protect My Environment, I Uphold My Values (ÇEDES) Protocol

Under the "I Protect My Environment, I Uphold My Values" (ÇEDES) Protocol, signed by the MEB in collaboration with the DİB and the Ministry of Youth and Sports (GSB), a range of activities have been introduced in schools.<sup>91</sup> As these activities become increasingly widespread, they have raised numerous concerns regarding human rights and ethics, which require evaluation through the lens of children's rights and education, as well as the principles of secularism and inclusivity.<sup>92</sup> The Protocol defines the project's objective as follows:

To contribute to the upbringing of our students as "individuals who embrace, protect, and develop our national, spiritual, moral, humanitarian, and cultural values", while being equipped with the skills needed for both the present age and the future, and can use these skills for the benefit of humanity; who have a love of science, curiosity, and cultural sensitivity; who integrate our national, moral, humanitarian, spiritual, and cultural values into their own lives; possess common sense, a good heart, good taste, and are physically and socially balanced.<sup>93</sup>

Within the scope of ÇEDES, students in various cities across Türkiye participate in values education, excursions or seminars with religious officials, both within schools and as part of extracurricular activities. The programme also includes visits to mosques, provincial and district *mufti* offices (institutions that regulate and supervise religious services), and various associations. The Protocol states that students' participation in these activities is voluntary and requires parental consent. It also stipulates that officials appointed by the DİB hold monthly meetings with parents.

Two major educators' unions, Eğitim-Sen and Eğitim-İş, have filed a lawsuit seeking the annulment and suspension of the ÇEDES Protocol.<sup>94</sup> They argue that ÇEDES violates Article 42 of the Constitution, as it is not a practice established by law and contradicts the principles of secular and scientific education. Furthermore, they underscore that, under Article 128 of the Constitution, public services in specific fields can only be carried out by the relevant public administration and civil servants. As of the time of writing, no judicial decision had been issued.

Certain components and activities within the scope of the ÇEDES Protocol and project raise potential concerns warranting close scrutiny. These are in regard to freedom of thought, conscience, and religion or belief. Due to limitations on fieldwork, this report does not offer a comprehensive human rights law-based assessment of the protocol and ÇEDES activities. Instead, it highlights fundamental human rights concerns based on publicly available sources.

First, the cooperation between the MEB, DİB, and GSB indicates the allocation of

<sup>91</sup> Çevreme Duyarlıyım, Değerlerime Sahip Çıkıyorum Projesi Uygulama ve Usul Projesi, 2023.

<sup>92</sup> Due to the limitations of this report, a comprehensive review of the ÇEDES project could not be conducted.

<sup>93</sup> See above 91.

<sup>94</sup> Bianet, "Eğitim-İş ÇEDES protokolünün iptali için dava açtı", 13 June 2023; Gazete Kadıköy, "Eğitim-Sen ÇEDES Projesine dava açtı", 28 September 2023.

public resources and facilities to access students and organise activities. On the other hand, while the ÇEDES project includes non-religious courses and activities, such as mathematics, Turkish, and mind games,<sup>95</sup> its primary focus remains on Islamic religious courses, lectures, discussions and practices, led by the DİB personnel appointed as counsellors.<sup>96</sup> The allocation of public resources to support education and activities centred around Islam may undermine the state's duty to uphold equality and impartiality towards all religions and beliefs. This practice requires justification based on objective criteria that align with human rights standards. It is also noteworthy that public resources are not allocated in the same manner for other religious or belief groups, and significant restrictions remain on religious education for individuals affiliated with other religions or beliefs.<sup>97</sup> A comprehensive assessment of the ÇEDES project is necessary within the framework of the right of parents to raise their children in accordance with their own philosophical and religious views, as well as the child's right to freedom of thought, conscience, and religion or belief, and to participation. Additionally, the ÇEDES project is implemented in conjunction with scouting activities, with some events organised separately for boys and girls.<sup>98</sup> Students also participate in activities held at mosques as part of the project.<sup>99</sup>

In the context of the ÇEDES project, the presence of religious officials in schools and the nature of their role in activities is also noteworthy. Although there is no application of appointing religious officials to schools, media reports have highlighted examples of their presence in schools through activities such as seminars or brief speeches. For example, Osman Akbaş, Imam of Karamürsel Ulu Mosque, met with students at Kocaeli Karamürsel Kindergarten as part of the ÇEDES project.<sup>100</sup> The school stated that the *imam* did not conduct a "formal lesson", but instead led a "10-15 minute session" focused on the themes of "benevolence and compassion".<sup>101</sup> There is a need for clear rules on the presence of religious officials in schools and their role in activities, in line with human rights law and the principle of secularism.

95 For instance, the [website](#) of Elazığ Yıldızbağları Secondary School mentions that each class participates in gardening activities under ÇEDES to raise awareness about their responsibilities within the project.

96 For example, a [post](#) from the Alaplı DİB Youth Centre's Instagram account on 19 December 2024 states: "ÇEDES meetings continue at the DİB Youth Centre. Students from Alaplı Central Secondary School gathered with their teacher for dinner at our DİB Youth Centre. They attended a lecture by Spiritual Counsellor Erkin KAYAR on justice and honesty, enjoyed refreshments and games. The programme, which began with evening prayers, concluded with a gift exchange after the Isha prayer."

97 M. Yıldırım, "An Appeal to Move Forward from Aspirations to Actions: Monitoring Report on the Right to Freedom of Religion or Belief in Turkey", Freedom of Belief Initiative, 2022.

98 This [Instagram post](#) from the Kütahya DİB Youth Centre provides an example of this practice: "Our Winter Academy program continues at the DİB Youth Centre. On Saturday mornings, we carry out Turkish, Mathematics, English, and Values Education courses with our female students. In the afternoon, alongside these lessons, mind and intelligence games are carried out with our male students.", 18 December 2024.

99 The [Instagram post](#) shared on June 11, 2024 by the Kütahya DİB Youth Centre, demonstrates an example of this practice: "The Mufti's Office of Kütahya organised a children's festival as part of the ÇEDES project at the İmam-ı Azam Mosque."

100 KOZ, "Kocaeli'de anaokulunda derse giren imam gündem oldu!", 22 December 2023. Another example is illustrated by the [Instagram post](#) from the DİB Youth Centre dated 2 January 2024: "At Atatürk Vocational and Technical Anatolian High School, as part of Values Education, the topic of "The Prophet's Example: The Holy Three Months" was discussed. The lesson, in which Religious Services Specialist Ali Dumanlı delivered a presentation, saw high attendance. We would like to thank our instructor, school administration, and students who participated."

101 *Ibid.*

- **The MEB and civil society organisations should ensure that the ÇEDES project complies with international human rights law, upholding the state's obligation to maintain equality, impartiality, and pluralism. The design and implementation of the ÇEDES project should undergo a comprehensive review to ensure they align with the rights of parents to raise their children in accordance with their own religious and philosophical beliefs, as well as the child's right to freedom of thought, conscience, religion, and participation.**
- **Activities carried out within the scope of the ÇEDES should be subject to transparent and effective supervision, with the results made publicly available.**
- **The MEB should revise regulations to ensure children's voluntary participation in line with principles of child participation and implement measures to monitor how these principles are reflected in practice.**

## 2.4 The MEB and its collaborations with various foundations

Practices, which have the characteristics of religious education and may be incompatible with freedom of religion or belief, also include social, educational, and cultural activities for students and are carried out within or in cooperation with schools under protocols between MEB and various foundations and associations. The Directorate General for Lifelong Learning (HBÖGM) within the MEB collaborates with multiple foundations through such protocols. Values education forms a central aspect of many of these agreements.<sup>102</sup> Concerns have been raised that these protocols and activities lead to several issues regarding children's freedom of religion or belief and pluralism, through the incorporation of religious instruction, with lawsuits filed on various grounds.<sup>103</sup>

These protocols were subjected to judicial review not in terms of human rights, but with regard to the execution of public service. In 2017, a protocol was signed between HBÖGM and the Ensar Foundation to organise various trainings, seminars, and social events. This Protocol authorised the Ensar Foundation to hold events for all students, trainees, instructors, and teachers in both formal and non-formal education. The activities were permitted to take place in institutions or other locations chosen by the foundation, with materials selected by the foundation and trainers from its staff. Furthermore, with permission to utilise the non-formal education information system, the foundation was granted access to personal information about all students and parents registered in the system. The Eğitim-Sen contested the Protocol in court, arguing that "the execution of public service cannot be regulated by vague provisions lacking conditions for amendments and clear guidelines". Additionally, on the grounds that the Protocol allowed the content and materials of the activities to be decided at the discretion of Ensar Foundation officials and provincial and district national education directors, the annulment of the protocol was requested. The 8th Chamber of the Council of State upheld Eğitim-Sen's arguments concerning the scope of the Protocol within formal education and ordered its suspension. However, for the extent of the Protocol concerning non-formal education institutions, despite dissenting votes from some members, the Chamber did not

102 I. Tüzün and E. Tunca, "Çeşitli Vakıf ve Dernekler ile İşbirliği Protokolleri Aracılığıyla Yürütülen Müfredat Dışı Etkinlikler", EŞİD, 2021, p. 24.

103 *Ibid.*

issue a suspension, reasoning that the "requirements of irreparable harm and clear violation of the law upon implementation are not simultaneously satisfied."<sup>104</sup> The MEB objected to the decision of the 8th Chamber of the Council of State. However, the Plenary Session of the Administrative Law Chambers rejected the objection and upheld the suspension decision of the 8th Chamber concerning formal education institutions. As a result, the judiciary reaffirmed that the implementation of the Protocol with the Ensar Foundation must be suspended in preschool, primary, and secondary education institutions.<sup>105</sup>

In the case concerning the extension of the Protocol signed between the MEB and the Hizmet Foundation on values education, the Council of State suspended its execution in relation to formal education. The lawsuit concluded that the direct involvement of other institutions, organisations, and individuals in executing certain activities for students in formal education would effectively turn these institutions into the operational domain of such external actors, violating the principles of legal and general administration. This approach was deemed incompatible with constitutional provisions and the core principles and guidelines of national education, which require education and training, as a public service, to be provided by civil servants and other public officials within the state's domain and in strict adherence to the principles of general administration.<sup>106</sup>

Despite the rulings of the Council of State, similar collaborations continue under protocols between the MEB and various foundations.

Without stringent standards of transparency and accountability, these partnerships pose potential risks of religious indoctrination or abuse. Ensuring transparency in the terms of these protocols, as well as in the content and execution of the activities, is crucial for safeguarding public trust and rights.

→ **Across all areas and levels of education, a new model should replace religion-oriented approaches, content, and practices. This new model should address the diverse demands and needs of society, while aligning with human rights standards concerning the rights of children and parents, as well as the purposes of education.**

<sup>104</sup> Sol, "Danıştay, MEB'in yetkilerini Ensar Vakfı'na devreden protokolün yürütmesini durdurdu", 29 September 2018.

<sup>105</sup> Sputnik Türkiye, "Danıştay'dan MEB'in Ensar Vakfı itirazına ret: Okullara giremez", 6 March 2019.

<sup>106</sup> Evrensel, "Danıştay, Hizmet Vakfı ile MEB arasındaki protokolü durdurdu", 4 March 2019.





## 3. Freedom from coercion: Religious pressure and violence

### 3.1 Introduction

This chapter aims to explore, from a human rights perspective, freedom from any coercion which would impair an individual's freedom to have or to adopt a religion or belief of one's choice. This highly complex issue has many dimensions and has only entered the judicial realm in isolated cases of coercion and abuse. At the writing of this report the examination of the numerous and diverse forms of coercion remains predominantly sociological.

The landscape of freedom of religion or belief in Türkiye is shaped by intersecting factors that create a multi-faceted paradigm involving numerous stakeholders. Legislative restrictions on the associative rights of religious or belief communities, along with the Directorate of Religious Affairs' (DİB) monopoly over Islamic public religious services, underscore the state's centralized role. Additionally, the state's exclusive authority over formal religious education contrasts sharply with the pervasive, albeit informal, presence and influence of *cemaat* and *tarikats* groups in non-formal religious education and everyday life. This disparity unfolds against the backdrop of Türkiye's commitments to uphold international human rights standards. Meanwhile, society reflects a spectrum of supportive and critical voices regarding these issues. Together, these factors create a challenging framework with many entanglements.

Against this backdrop, it is important to bear in mind that the individual's freedom is, even more so, subject to family intervention and demographics. Families hold significant power over both women and men. One way of suppressing individual autonomy is through obstruction and oppression, often imposed by families. This form of control exerts heavy influence over individuals, with men generally experiencing some relief from it upon reaching adulthood, while women remain subject to it throughout their lives. A particularly pervasive aspect of this control is the regulation of women's bodies tied to notions of honour and dress. Two distinct forms of this regulation have manifested by the public enforcement of the headscarf ban and familial or societal pressure to adhere to modest clothing.<sup>107</sup>

In Türkiye, the DİB is tasked with the provision of "enlightenment of the public about religion [İslam]".<sup>108</sup> With its expansive presence and outreach, spanning mosques, schools, student dormitories, prisons, hospitals, television and radio broadcasting, the DİB wields significant influence. Nevertheless, *tarikats* (religious orders) and *cemaats* (jamaah) also act as less formal but powerful authorities in diverse re-

107 A. Bora and İ. Üstün, "Sıcak Aile Ortamı: Demokratikleşme Sürecinde Kadın ve Erkekler", TESEV, 2005, p. 104-105.

108 Diyanet İşleri Başkanlığı Kuruluş ve Görevleri Hakkında Kanun (Law on the Establishment and Responsibilities of the Presidency of Religious Affairs) Law No. 633, Article 1, 22 June 1965.

religious matters and hold influence. Coupled with ongoing conservative societal trends, the result is the widespread exposure to, and acceptance of, a conservative interpretation of Islam.

Despite the ubiquity of the aforementioned, there do exist alternative or opposing voices and platforms that internally challenge the dominant narratives.<sup>109</sup> These voices and platforms offer a counter-discourse, providing spaces for critique and reform. While there are many initiatives that offer critical perspectives, some stand out as instrumental in disclosing, among other issues, various forms of coercion in Islamic religious communities and families. [Reçel](#), a Muslim women's blog, and Muslim feminist initiatives such as [Havle Women's Organization](#) are among the prominent symbols of opposition to these conservative interpretations. Since its establishment in 2014, Reçel has provided a space for women to discuss and question their daily lives. The blog advocates around the [statement](#), "Systematic oppression of women cannot be justified using Islam as a pretext". [Yalnız Yürümeceksin](#) (You Won't Walk Alone), initiated by a group of young women and nonbinary people, is another important initiative that offers a platform of solidarity and scholarship for young women. They [aim](#) "to create a space where young people can tell their stories firsthand about various implications, mostly affecting their lives negatively, of their religious families and a religiosity that has become a discourse of power". Young women share letters regarding their experiences of abuse and/or harassment due to diversity in their Islamic belief, or disbelief, and the choice to take off their veil.

A human rights law perspective and focus on central human rights issues and state obligations would pave the way for addressing these complex issues in the legal realm. This would harness legal protections providing an important tool to navigate these issues.

This chapter sets out the key standards of applicable international human rights law, national legislative framework, and central manifestations of coercion that impairs the freedom of having and practicing a religion or belief of one's choice. The investigation of this topic is supported by both the conceptual exploration of spiritual or religious violence and by sharing specific experiences of individuals, particularly women and girls, within religious or belief communities. The chapter also offers important recommendations for legislative and policy measures, victim support and protection, religious education, transparency of religious or belief communities, capacity building, and data collection.

For this chapter various forms of methodology were employed. A desk-based study was conducted to review applicable international human rights standards and national legislation. The media was scanned to identify recent and important cases, as these instances enter the public domain predominantly through media coverage

109 There have been individuals who have been prosecuted because of their critical stance or alternative readings and interpretations. Some examples include the court case against Zeynep Duygu Ağbayır under Article 216(3) of the Turkish Criminal Code, on grounds of denigrating the religious values of a segment of society because of her tweets reversing anti-woman hadith. Charges include 'the denigration of religious values of a segment of society by way of changing certain hadith which are considered sacred in Islam and replacing several of its words with rude words.' Indictment prepared for the Istanbul Criminal Court of First Instance, 25 August 2021. See M. Yildirim, ["An Appeal to Move Forward from Aspirations to Actions – Monitoring Report on the Right to Freedom of Religion or Belief in Türkiye"](#), 2022, p.67.

rather than legal proceedings. Finally, we organised a focus group meeting with eight experts to understand the Turkish context better. The group consisted of two academicians and activists in the fields of Muslim feminism. The activists endeavour to support women who have removed their veil, freedom of religion or belief, and human rights in general. The participants represented a broad age range, 25-60, ensuring perspectives from different generations. The focus group discussed, in the context of coercion, the concept of spiritual and religious violence and its manifestations in the lives of women and girls. A limited number of interviews were also conducted to address knowledge gaps.

The chapter has certain limitations. Notably, the focus remains on coercion in the context of Islam. Expanding the analysis to other religious or belief communities was not feasible due to limitations in accessible information. Furthermore, the review of the national legal framework is confined to relevant legislation. An examination of court cases was not included, primarily because there are very few court cases touching upon the issue. The existing cases mostly involve allegations of sexual abuse.<sup>110</sup>

### 3.2 Freedom from coercion in international human rights law

**Under international human rights law, states have the duty to protect everyone's right to freedom of thought, conscience, and religion or belief along with other human rights. These standards are relevant for states' actions and public functions but also extend to the sphere of non-state actors, including religious or belief communities.** In addition, these responsibilities have important implications for guaranteeing the protection of individuals. In particular, necessary measures must be taken to protect women, vulnerable adults, and children from coercion to believe and practise religion or belief in a manner contrary to their religion or belief. Such coercion can manifest in spiritual or religious pressure, violence, or abuse. At the same time, religious or belief communities retain the right to manifest religion or belief in worship, teaching, practice, and observance. The collective dimension of freedom of religion or belief protects the autonomy of religious or belief communities and ensures freedom in their internal affairs. The latter is shaped by the tenets of the religion or belief in question. Accordingly, the autonomous sphere can be expansive.

These international standards and state obligations create negative obligations for states, in which authorities must refrain from interfering in the exercise of these rights. States also have positive obligations wherein they are bound to take measures to ensure rights.

Article 18 of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the Council of Europe (CoE) European Convention on Human Rights (ECHR) protect the right to freedom of thought, conscience and religion. These provisions protect both the internal and external dimensions of this fundamental freedom. Protection of personal thought, conscience, and belief be-

<sup>110</sup> For example, a man who was accused of sexually abusing 10 children between 2012 and 2015 in dormitories allegedly affiliated with the Ensar Foundation in Karaman was sentenced to 508 years and 3 months in prison: S. Girit, "Karaman skandalı: Muharrem Büyüktürk'e 508 yıl ceza", BBC Turkish, 20 April 2016.

gins with the rights to hold and to change these beliefs. This is **often referred to as the *forum internum*, the internal aspect of freedom of religion or belief, which cannot be subject to restrictions under any circumstances. Indoctrination is, therefore, prohibited. States have a duty to ensure that individuals can develop, refine, and change their personal beliefs without interference.**

The ICCPR Article 18 protects freedom of thought, conscience, and religion or belief. Coercion is explicitly prohibited under Article 18/2:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

No one may be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

The UN Human Rights Committee's General Comment on Article 18 states that the latter "does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice".<sup>111</sup> Furthermore, Article 18/2 bars coercion that would impair the right to have or adopt a religion or belief. This includes the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief, or to convert.<sup>112</sup> States must therefore safeguard the freedoms protected within the scope of Article 18 for both religious and non-religious individuals, ensuring that no individual is subjected to pressure that infringes upon their freedom in matters of conscience and belief.



### Coercion in human rights law

There is no single definition of "coercion" within international human rights law. Across national jurisdictions, definitions vary but generally include the use of force, or an express or implied threat that puts the victim in immediate and reasonable fear of the consequences, thereby compelling the victim to act contrary to their will. In examining coercion claims, the Human Rights Council has affirmatively considered that threats of violence or penal sanction, as well as restrictions on access to education, medical care, employment, or participation in public life, are coercive acts that contravene article 18 (1) and (2) of the Covenant.<sup>113</sup>

While the ECHR Article 9 does not include an explicit prohibition of coercion, the European Court of Human Rights (ECtHR) jurisprudence is compatible with the UN standard.

<sup>111</sup> UN Human Rights Committee, CCPR General Comment No. 22: [Article 18 \(Freedom of Thought, Conscience or Religion\)](#), 30 July 1993, CCPR/C/21/Rev.1/Add.4, para. 3.

<sup>112</sup> *Ibid.*

<sup>113</sup> UN Interim Report of the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, [Freedom of Thought](#), A/76/380, 2021, para. 30.

The ECtHR allows states a narrow margin of appreciation and requires them to provide serious and compelling reasons for any interference in the choices that people may make in pursuance of a religious standard of behaviour within the sphere of their personal autonomy.<sup>114</sup> Any interference must be justified under Article 9/2 which sets out the framework for permissible limitations:

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Nevertheless, **if their choices are incompatible with the key principles underlying the ECHR, such as polygamous or underage marriage or a flagrant breach of gender equality, or if they are imposed on the believers by force or coercion, restrictions are justified.**<sup>115</sup>

A religious life may require adherence to religious rules and self-dedication to religious work that can take up a significant portion of the believer's time, sometimes assuming extreme forms. In such cases, the presence of a **free and independent decision by an adult is underscored**. To comply with freedom of religion or belief, this way of life must be entered and maintained with free choice. This applies even if it results in conflict with family members who oppose that choice.<sup>116</sup>

The need for protection against coercion may manifest itself by other means as well. For example, domestic law may deem it appropriate to seek to protect individuals considered vulnerable, whether on account of immaturity, status or otherwise, against "improper proselytism". This refers to encouragement or pressure to change religious belief; such pressure may be deemed inappropriate in specific circumstances.<sup>117</sup> Further, under Article 2 of Protocol No. 1 of the ECHR, states must respect parents' philosophical or religious convictions when providing education.<sup>118</sup>

States have a positive obligation to protect individuals from the interference of non-state actors in their right to have or adopt a religion or belief of one's choice. They must ensure that everyone, including religious minorities, can practise the religion or belief of their choice free of coercion and fear. If non-state actors interfere with these rights, especially the freedom to change or to maintain one's religion, states are obliged to take measures to investigate, bring the perpetrators to justice and compensate the victims.<sup>119</sup> This also applies to the right not to be forced to adopt or change a religion or belief. If individuals or organizations use coercion or exploit vulnerability to convert people, protection by state may prove necessary.<sup>120</sup>

<sup>114</sup> Council of Europe, [Guide on Article 9 of the European Convention on Human Rights](#), version August 2024, para. 95.

<sup>115</sup> ECtHR, *Jehovah's Witnesses of Moscow and Others v. Russia*, 2010.

<sup>116</sup> Guide on Article 9, para. 127. See also *Ibid.*, para. 111.

<sup>117</sup> ECtHR, *Kokkinakis v. Greece*, 1993.

<sup>118</sup> *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, App. no. 10491/83, *Angeleni v. Sweden*, (1986) DR51, p. 41; and App. no. 23380/94, *C.J., J.J and E.J. v. Poland*, (1996) DR84, p. 46.

<sup>119</sup> UN Report of the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief, Asma Jahangir, [A/60/399](#), 2005, para. 53.

<sup>120</sup> UN Interim Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, *Elimination of all Forms of Religious Intolerance*, [A/67/303](#), 2012, para. 24.

### *Settings of increased vulnerability and vulnerable groups*

Protection against coercion requires states to exercise vigilance in preventing its occurrence, particularly within institutional settings where power imbalances may make individuals more vulnerable. In this context the UN Special Rapporteur emphasizes that states must take great care to ensure that the authority held by state agents and institutions is not misused to pressure individuals into converting or reconvert to a particular religion. These findings also provide insight into state responsibilities regarding prohibition of coercion. In this context, schools, as educational centres and influential environments, require focused attention due to their significant impact on children, who may be especially susceptible to coercion from teachers or peers.<sup>121</sup> In all these, and other public institutions, states have a special responsibility to guarantee everyone's protection against possible coercion to convert or reconvert to a religion or belief against their will.

States are also responsible for preventing forced conversions, including in marriage. The obligation to guarantee effective protection, especially for women and sometimes minors, in this sensitive field follows from the right to freedom of religion or belief as well as from the duty of states to combat all forms of violence and discrimination against women.<sup>122</sup> According to Article 16 (1/b) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), states are expected to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on the basis of equality of men and women [...] the same right freely to choose a spouse and to enter into marriage only with their free and full consent".



#### **18 Commitments on "Faith for Rights" (2017)**

**Commitment 15:** We pledge neither to coerce people nor to exploit persons in vulnerable situations into converting from their religion or belief, while fully respecting everyone's freedom to have, adopt or change a religion or belief and the right to manifest it through teaching, practice, worship and observance, either individually or in community with others and in public or private.

### *State obligations to protect women and girls from harmful practices*

CEDAW constitutes a cornerstone international legal framework promoting gender equality and safeguarding women's rights. It offers a comprehensive strategy to combat discrimination and uphold women's human rights across essential aspects of life.

**Eliminating discrimination (Article 2f):** Obliges states to take all necessary steps to eradicate discrimination against women, including those rooted in cultural practices or laws that perpetuate violence.

<sup>121</sup> UN Special Rapporteur's report, [A/HRC/16/53](#), 2010, paras. 20-62.

<sup>122</sup> See above 120, para. 25.

**Transforming cultural norms to prevent violence (Article 5):** Highlights the importance of reshaping social and cultural patterns that foster discrimination and violence against women, with a focus on public education and raising awareness.

**Education (Article 10):** Guarantees equal educational opportunities and aims to eliminate stereotypical notions of gender roles at all levels of education.

**Health and reproductive rights (Article 12):** Ensures equal access to healthcare services, including family planning, for women.

**Marriage and family relations (Article 16):** Affirms women's equal rights to marry, freely choose a spouse, and enter marriage with full consent, along with equal rights and responsibilities during marriage, its dissolution, and as parents.

Pressure or spiritual/religious violence compels women to conform to specific beliefs and practices. This undermines their individual rights to freedom of thought, conscience, religion, and belief. States must intervene when such practices violate fundamental rights. Such forms of violence often manifest in the form of societal, familial, or institutional pressures, ranging from subtle manipulation to overt threats or physical abuse. This infringement not only erodes women's agency but also reinforces discriminatory norms that perpetuate gender inequality, silencing diverse voices and restricting pluralism within religions or beliefs.

### *Child's right to freedom of thought, conscience, and religion or belief and other rights*

The Convention on the Rights of the Child (CRC) enshrines several rights that are relevant to prohibition of coercion. The CRC protects children from all forms of violence, exploitation, and abuse, ensuring their right to health, education, and protection from harm.

**Right to freedom of thought, conscience, and religion (Article 14):** Protects child's right to freedom of religion or belief and obliges states to respect the rights and duties of the parents to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

**Protection of children from abuse and exploitation (Article 19):** Requires states to implement all necessary legal, administrative, social, and educational actions to safeguard children from any form of physical or mental harm, abuse, neglect, maltreatment, or exploitation, including sexual abuse.

**Prevention of child sexual abuse (Article 34):** Mandates states to take proactive measures to prevent child sexual exploitation and abuse.

**Best interest of the child (Article 3/1):** The overarching principle ensures every child's right to have their best interests taken into account and is a primary consideration in all actions or decisions that concern or affect children.

**The principle of evolving capacities** is an indispensable principle that must be considered so that children are able and empowered in the realisation of their rights.

All human rights are universal, indivisible, interrelated, and interdependent.<sup>123</sup> The right to manifest religion or belief may be subject to limitations, however restrictions must be narrowly applied.<sup>124</sup> They must, cumulatively, be prescribed by law, be necessary in a democratic society, pursue a legitimate aim to protect public safety, public order, health or morals and the protection of the rights and freedoms of others, be proportionate to the aim pursued, and not be discriminatory. There may be tension between coercion and the collective dimension of freedom of religion or belief. **States have an obligation to prevent harmful practices, violence against vulnerable individuals, especially women and girls, and actions aimed at destruction of any human right. All of the previous have a coercive element.** When actions are promoted or condoned as manifestations of religion or belief, states are bound to apply restrictions to protect human dignity.

### 3.3 National legal framework

**As a signatory to key international human rights treaties, Türkiye has undertaken substantial obligations to safeguard the human rights of all individuals, including the right to freedom of religion or belief.**<sup>125</sup> Article 90 of the Constitution gives precedence to international human rights treaties by stating that, in cases of conflict between domestic laws and international treaties concerning fundamental rights and freedoms, the provisions of these treaties shall prevail.

As a secular republic,<sup>126</sup> Türkiye has significant national obligations to protect freedom of religion or belief under Article 24 of the Constitution which enshrines everyone's right to the freedom of conscience, religious belief, and conviction. There is an explicit prohibition of coercion, under Article 24(3): "No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions".

While official censuses or surveys to document the religious affiliations of its population are not conducted, Türkiye is generally known as a "Muslim country". Most of the population subscribe to Sunni Islam, however there is considerable religious diversity.<sup>127</sup>

Although no official authority represents Islam in the public system, the DiB plays a substantial role in the context of Turkish society's relation with Islam.<sup>128</sup> The scope

123 UN Doc, "Vienna Declaration and Programme of Action", United Nations Office of the High Commissioner for Human Rights, 25 June 1993.

124 UN, General Comment 22, para. 8.

125 Convention Against Torture (CAT), International Covenant on Civil and Political Rights (ICCPR), Convention on Discrimination Against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC).

126 Article 2 of the [Turkish Constitution](#) defines Türkiye as a secular republic.

127 Z. Nişancı, "[Faith and Religiosity in Turkey](#)", International Institute for Islamic Thought and Mahya Publishing, 2023, p. 29. This rate of 5.7% largely coincides with the 6% finding in the "[If Turkey Were 100 People Research](#)" conducted by KONDA in 2022.

128 Mustafa Kemal Atatürk, the founder of Turkish Republic, established the Directorate of Religious Affairs: "[To carry out the affairs related to the faith and worship of the Islamic religion and to manage religious institutions](#)". In a secular country, such an organization should provide the necessary needs of people of belief and disbelief, but that's another chapter's subject.



of its task regarding the enlightenment of the public on Islam extends beyond religious practices to notions about children, youth, women, and family.<sup>129</sup> The DİB is responsible for managing and overseeing Islamic religious services, including the administration of mosques, and for providing religious guidance to the public. It is also responsible for supervising the appointment, training, and activities of imams, preachers, and other religious personnel.<sup>130</sup> The DİB's guidance role includes providing official interpretations of Islamic teachings and rulings on religious matters through *fatwas*.<sup>131</sup>

**Under the national law there are important criminal provisions addressing obstruction of religious practice and abuse of religion.**

Turkish Criminal Code, Article 115, penalizes forcing someone to practise or abandon a religion and obstructing the exercise of religious beliefs. Article 219 penalizes the misuse of religion or religious symbols to engage in fraudulent activities or manipulate individuals.

Pertinent provisions also exist under the Turkish Civil Code. Article 368 states that members of a household are subject to the household order, while underscoring that members benefit from freedoms regarding, among others, religious beliefs. Regarding children and the parents' role in religious upbringing, Article 341 explicitly states that a mother and father have the right to determine the religious education of their child. The second part of the provision, which states that any agreement to limit these rights of the parents would be considered null and void, implies that the purpose of the provision is to protect parents against any coercion by other actors. The same article also states that the adult is free to choose their religion.

**The legislative framework on religious or belief communities, and specifically *tarikats* and *cemaats* is also highly relevant to the issue of coercion.** A *tarikat*, a religious order, refers to a structure organised according to the rules by which the followers of a sheikh are expected to abide. With the 1925 Law No. 677 on the Closure of Dervish Lodges and Tombs and the Prohibition and Abolition of Tomb Keepers and Certain Titles, all *tarikats* and titles commonly used within such structures such as sheikhdom, were banned, and the dervish lodges and tombs that were places of religious orders were closed. Furthermore, Law No. 677 is one of a set of reform laws granted special constitutional protection under Article 174 of the Constitution. Unlike other laws, these reform laws cannot be challenged, and their unconstitutionality cannot be claimed, nor can the Constitutional Court decide to annul them. Largely due to this law and its special protection, *tarikats* are not recognized as legal entities despite their continued informal existence.

According to Article 101(4) of the Civil Code, **"No foundation can be established** for purposes that are contrary to the characteristics of the Republic as determined by the Constitution, the fundamental principles of the Constitution, law, morality,

<sup>129</sup> Presidency of Religious Affairs Directive on Duties and Working Procedure (Diyanet İşleri Başkanlığı Görev ve Çalışma Yönergesi), 2002, 25/f.

<sup>130</sup> Diyanet İşleri Başkanlığı Kuruluş ve Görevleri Hakkında Kanun (Law on the Establishment and Responsibilities of the Presidency of Religious Affairs) Law No. 633, 22 June 1965.

<sup>131</sup> *Ibid.*

national unity and national interests, or to support members of a certain race or community [*cemaat*]"<sup>132</sup>



### Coercion expressed as spiritual or religious violence or abuse

The use of the term 'spiritual abuse' first began to be used in the USA and then spread around the UK and Australia. Klaus Kießling's article distinguishes between three forms of spiritual abuse as "spiritual neglect, manipulation, violence".<sup>133</sup> Spiritual abuse is a broad concept encompassing **neglect**, such as the lack of information or alternative resources on religious learning; **manipulation**, exemplified by the misinterpretation of Quranic texts to suggest male superiority over women, as highlighted by Heart and Justice for Muslims Collective; and **harassment and violence**, which can manifest in places like churches or dormitories.<sup>134</sup>

In specific situations religious institutions or communities, or the flow of information on religion, provide a **power of sanction** for people (sometimes even the father in the family). In certain cases, the **power of knowledge** is wielded as a tool of manipulation to control those deliberately left uninformed. In many cases, religious leaders are the central figures in claims of spiritual violence or abuse due to their clear **referent power**.<sup>135</sup>

Spiritual violence, or, more specifically religious violence, is not a "new" form of violence, but its classification is historically limited. Identifying and labelling different forms of violence serve as powerful tools for advocacy. Conceptualization is important for the formation of specific policies and practical support services,<sup>136</sup> although conceptualization towards a sacred institution runs the risk of undermining the issue, marginalization, and depoliticization.<sup>137</sup>

One of the central issues has been that of appropriately translating and using the concept in Turkish. The direct translation of the concept of "spiritual abuse and violence", "*manevi istismar ve şiddet*", triggered diverse reflections when it was presented to the focus group.

According to focus group participants, the Turkish word *manevi* (spiritual) has been employed by the government and authorities as a vague tool to promote conservative commentaries on Islam and conservative religious services or applications. Participants noted that the concept of spirituality (*maneviyat*) has been used to suppress beliefs that differ from Sunni Islam. Additionally, LGBTI+s, alternative interpretations of Islam, or even something as simple as certain women's dress can be stigmatized as threats to this spirituality.

132 Turkish Civil Code Law No. 4721, 22 November 2001; Venice Commission, "Opinion on the Legal Status of Religious Communities in Turkey and the Right of the Orthodox Patriarchate of Istanbul to use the adjective 'Ecumenical'", Opinion No. 535/2009, 15 March 2010.

133 K. Kießling, "Spiritual abuse in the Catholic church", in International Academy of Practical Theology Conference Series, Volume 3, 2023.

134 *Ibid.*

135 *Ibid.*

136 For more examples on the psychological violence please see Havle Kadın Derneği's report, "[Naming Violence: Women's Religious Belongings and Their Ways to Survive](#)", 2021, p. 57.

137 E. Sajed, "Reconceptualising Coercive Control in Religious Contexts", University of Strathclyde, 2021.

"While facing institutional pressure from a state monopoly to approach this [pressure] from such a spiritual perspective seems quite soft to me, to be honest. (...) In the past, in [Türkiye's] National Development Plans, there was a motto of following Atatürk's principles and reforms. Instead, a new concept has emerged, 'we will protect our spiritual (*manevi*) and national values'. What exactly are we talking about?" (Academic)

Meanwhile, one participant criticized the term "spiritual violence", arguing that it frames violence related to religion as distinct and unique, potentially suggesting it operates differently from other forms. She expressed that this perspective might obscure its connection to broader patterns of violence:

"When we say spiritual violence, we are talking about forms that are essentially produced by [the use of] language and religion. When we label them as spiritual violence, we treat them as unique forms of violence. I am not so sure about that." (Academic)

The above examples show that focus group participants discussing the issue in a Turkish context leaned away from the Turkish term for "spiritual" and instead used the term "religious" (*din temelli/dinî istismar ve şiddet*) to describe such abuse and violence. Another discussion regarding the concept was the vagueness of the term "spiritual" abuse and violence. The use of the term 'religious violence' was more tangible. It refers to sources of the abuse and violence that are both social constructs and institutions. In addition, as noted previously, the need for the concept is driven by practical concerns, aiming to make people's experiences visible and addressable via policy-making and social services among other means.

"Actually, I hope we can directly give a new name to this spiritual violence. As it is now, it [the term] comes across very foreign, and it doesn't resonate with me. (...) We are actually a platform that really wants the existence of this concept in Turkey [*Yalnız Yürümeyeceksin*]. Because (...), when we talk about the violence that we experience, since we can't really name it, it's like it's received as, 'well, things like this happen in the family'. (...) As if our feelings are abnormal." (Activist)

The focus group participants underscored that both the perpetrators and victims of such violence, whether consciously or unconsciously, could be anyone. This can manifest as individual acts rooted in societal and religious norms, or as more institutionalized forms embedded within state structures, religious communities, and similar entities.

Participants emphasized the need to approach these differently, recognizing the distinct dynamics of personal *versus* systemic violence. The intention and the distinction between state and parents' authority should be considered. While international literature often limits the definition to religious leaders, in the Turkish context the primary role of the state was emphasized, as exemplified in the following quote:

"Malicious intent is something that definitely needs to be considered separately. So, I mean, which one will this concept address, all of them at once?"

I am not sure that the violence of a person who unconsciously puts religious pressure on their child, fearing that their child might go to hell, should be given the same name as the violence of a person who uses their religious authority for evil. The government uses this [the spirituality term] directly as an equivalent to Islam, placing it under spiritual education and values. It uses it for the religion's forcible indoctrination." (Activist)

A central concern is that of ascertaining the primary addressee of possible sanctions. Here, the state, public institutions, and religious leaders are pointed out to be the key parties:

"Really, the structural and institutional ones [bodies] should be subjected to much more serious sanctions because these things affect so many people all at once. Who uses them? Well, first of all politicians use them. They use religious discourse in such an obvious way, especially anti-women discourse. *Tarikat* leaders definitely use them. (...) In a government dorm in Bartın they knock on the doors every morning to wake up the students for morning prayer. Isn't that what the call to prayer is for? (...) This is religious violence." (Activist)

### 3.4. Freedom from coercion that would impair one's right to have or practice a religion or belief

Among central issues labelled as spiritual or religious violence relating to manifestations of religion or belief, are those of coercion in the realms of religious clothing, religious community housing and dormitories which includes performing *namaz* prayers, reading of the Quran, and joining religious conversations. These will be considered below.

#### 3.4.1 Coercion in relation to religious clothing: The removal and use of the headscarf

Veiling, or specifically the headscarf (*başörtüsü*), especially since the 90s, has been one of the most significant symbols of the Islamist movement in Türkiye. As reported in multiple sources, with the dramatic increase of the number of students wearing the veil in the 1960s, the veil became one of the key issues of public policy.<sup>138</sup> The first step was taken after the 1980 coup.<sup>139</sup> In multiple statements, Kenan Evren directly targeted women wearing the veil, arguing that their presence in public institutions was inappropriate. Following changes in public dress codes, women wearing the headscarf were prohibited from working in public institutions. This led to increasing tension as the Islamist movement gained power in Türkiye. After the February 28, 1997 intervention, the veil was completely banned in public institutions, including universities. This ban persisted, even through the first eight years of the AKP government. Though the laws remained unchanged during this period, women with headscarves were encouraged to attend classes without removing

138 For example: Doğruluk Payı, "Türkiye'de Başörtüsü Yasaklarının ve Düzenlemelerinin Geçmişi", 2022; Al Jazeera Türk, "Türkiye'de başörtüsü yasağı: Nasıl başladı, nasıl çözüldü?", 2013.

139 The timeline of the process: Al Jazeera Türk, "Türkiye'de başörtüsü yasağı: Nasıl başladı, nasıl Çözüldü?", 2013.

them. In 2011, the ban was gradually eased and lifted, and it is no longer enforced in public institutions.<sup>140</sup>

Focus group participants shared experiences and observations of various forms of religious abuse and violence. Veiling and the headscarf, however, stood out as distinctively key symbols in understanding the experience of religious abuse or violence in Türkiye.

Both the state's coercion of women to remove the headscarf in public institutions and parents' coercion of their daughters to cover their hair can be labelled as forms of religious abuse and violence. In both cases, figures of authority interpret and enforce their own religious understanding as absolute truth for women. Legal restrictions on the headscarf have been the subject of many court cases at the national level degree courts, the Turkish Constitutional Court, and, at the international level, the ECtHR.<sup>141</sup> In contrast, the non-formal forms of coercion on wearing or removing the headscarf have not been the subject of legal proceedings and thus are not subject to any normative assessment.

*This violence starts from an unbelievably young age, in my case at the age of 4. Children are abused with phrases like, 'cover your head', 'don't uncover that [body part]', 'don't open your legs', referencing religion, 'if you do this you will go to hell', and, 'if you blaspheme, you will go to hell'. Many of the things my family said or imposed upon me are not actually in the Book [the Quran], in fact it says not to do this. But instead of saying 'This is what I want.', they say, 'This is what Allah wants.', or instead of saying 'this is what men want.', they say, 'Societal gender roles are not about what I want, they're actually what a greater power wants.'. They refer to Allah to better suppress us since we don't have the luxury of rebelling against Allah.*  
(Activist)

**While it is not the case for all, many women who remove their headscarves experience considerable social, familial, and psychological hardships. They often encounter strong resistance from family members and close-knit communities who perceive the headscarf as an integral part of cultural or religious identity.**<sup>142</sup> Some families resort to emotional manipulation by expressing disappointment or fear of societal judgment. Particularly in conservative environments, women may face exclusion from their social circles and be accused of abandoning their faith or moral values. This leads to feelings of guilt or spiritual conflict. Women who rely on family support may find themselves financially vulnerable if they face estrangement or hostility. In some cases, both male and female religious leaders or community figures may intervene, urging women to reconsider their decision. A study on the mental health of women who have chosen to remove their headscarf found that women show signs of stress particularly during the process of deciding to take off their headscarves, while coming out to their immediate circle, especially their families,

140 For a related article: M. Göçgün and S. M. Kaya, "Yüksek Öğretim Kurumlarının Uygulanan Başörtüsü Yasağı", ASBÜ Hukuk Fakültesi Dergisi 5, No. 1, 2023.

141 Among others, ECtHR, *Leyla Şahin v. Turkey*, App. No. 44774/98, 2005.

142 B. Cebeci and N. Mengü, "Herkes İstedığı Gibi Yaşasın: Türkiye ve İran'daki Kadınların Başörtüsü Çıkarma Deneyimleri", İletişim Yayınları, 2021.

and when leaving the house without a headscarf. These signs were comparable to the subheadings of post-traumatic stress symptoms and included hyperarousal, re-experiencing, and negative changes in cognition and mood. In addition, eating problems, psychosomatic pain, dissociation, and suicidal thoughts and attempts were found to accompany the above post-traumatic stress symptoms.<sup>143</sup>

In 2019, the #10yearchallenge trend, where celebrities shared their decade-old photos on social media, became a platform for women in Türkiye who had chosen to remove their headscarves to share their journeys.<sup>144</sup> Sharing their photos with and without headscarves, women made their struggle more visible. This led to a series of reactions in the form of solidarity messages and criticism of those who shared their photos. The messages express different views on the meaning of wearing or removing the headscarf in the context of freedom.<sup>145</sup>

In a news report, a young woman recounts her journey of covering and removing her headscarf. She was forced to cover her hair at the age of 11: "I cried so much. They said at the time, 'She'll cry and cry and get used to it.' That same year, my father tried to make me leave school. By the time I was 12, they insisted I wear a long coat, saying I looked like an adult woman." In 2018, as an adult who had lived through a marriage, the woman recounted that she had gotten a divorce and relocated abroad with her daughter because, "I refused to raise another girl in that environment. Had I stayed in Turkey, the moment my daughter turned 11, people would have said, 'You're grown up now; it's time to cover your head.' My daughter appears older than her age—she looks about 13—which was a significant factor in my decision to leave." At that time she also removed her headscarf but she could not tell her father. "Another reason for my silence is my sister. If my father learns that I've taken off my headscarf, he won't let my sibling go to university either."<sup>146</sup>

Another example reflected in the media illustrates the significant economic pressures faced by youth seeking autonomy from strict environments. A 20-year-old woman who was raised in a *tarikāt* affiliated family recounts being compelled to adopt religious practices including veiling which she was forced to begin at the age of 13. Now a university student, she no longer lives with her family nor wears a headscarf in her daily life. She indicates that she still feels compelled to comply with her family's expectations during home visits to avoid financial restrictions. She expresses concern that openly rejecting these practices could lead to economic punishment, such as withholding financial support for her education or other essential needs. This is an example of economic dependence turning into a tool of control and limiting an individual's ability to fully express her beliefs and choices.<sup>147</sup> For many young women, the financial ties to families become a significant obstacle to breaking away from restrictive norms.

143 H. K. Kara, "Başörtüsü Çıkarma Deneyimi: Nitel bir Araştırma", 2022. p. 90.

144 Bianet, "Başörtülerini Çıkartan Kadınlar Mücadelelerini #10YearChallenge ile Duyuruyor", 21 January 2019.

145 BBC Turkish, "Sosyal medyadaki #10YearChallenge'a Türkiye'de başörtüsünü çıkaranlar da katıldı", 19 January 2019.

146 Bianet, "Babam Açıldığımı Duyarsa, Kardeşimi de Üniversiteye Göndermez", 11 February 2018.

147 Evrensel, "Tarikat yurtlarında kalan genç kadınlar anlattı", 12 January 2022.

As seen above, addressing the issue of coercion in relation to veiling, whether in the form of compelling women to wear or to remove the headscarf, through state action or within the family and religious or belief communities, is not straightforward. It represents a complex intersection of personal agency, freedom of religion or belief, and familial and societal pressures. It demands a multi-faceted response.

### 3.4.2 Coercion to practise religion in the context of religious community houses and dormitories

Experiences in *tarikats/cemaats* dormitories and residential houses remain largely inaccessible and unknown. However, state obligations to protect and safeguard children become particularly critical in the case of children enrolled, particularly with parental consent, in the non-formal boarding houses of religious communities (*tarikats* or *cemaats*) and that of those attending *madrasahs*. Numerous women and men, who say they attended residential Quran courses or stayed at dormitories operated by a *cemaat* or *tarikats* as children, have come forward in recent years as adults to convey their experiences. Some extreme cases have also been reported in the media. Due to limitations in accessing these facilities and the opaque nature of the relevant communities, direct observation or access has not been possible. Therefore, we have relied on these experiences that have been reported in the media and the analysis should be considered preliminary research. Most have not led to prosecutions. We did not have the means to verify the following testimonies, and these practices cannot be generalised to all *cemaats* or *tarikats* operating *madrasahs*, Quran courses, or dormitory/student residences. However, there appear to be adequate commonalities in terms of coercive practices that are consistent with the accounts from individuals we interviewed. While verification is not possible, it is also important to note that online forums contain positive accounts of individuals' experiences in *cemaat/tarikats* run dormitories.<sup>148</sup> Nevertheless, substantial testimony calls for public authorities to demonstrate and ensure necessary safeguarding measures are taken, accountability and oversight procedures are in place, and perpetrators are brought to justice.

The case of 12-year-old Abdülbaki Dakak, found dead in a barn in Şanlıurfa in 2023 after staying in a *madrasah*, raises significant concerns regarding child protection and the role of unregulated religious institutions. Abdülbaki, a student at a non-formal *madrasah* with alleged ties to the Menzil *tarikats*, had been staying there with 19 other children. He was reportedly under pressure from his family to continue his studies at the *madrasah* despite his attempts to escape. His death, initially suspected to be suicide, has sparked discussions over potential abuse or coercion. The institution was later closed by the authorities and its *imam* was questioned.<sup>149</sup> At the time of the writing of this report the case is ongoing. The lack of state oversight in such institutions highlights serious gaps in child protection laws and their enforcement, as well as in the regulation of religious education in Türkiye.

<sup>148</sup> For example, <https://www.kizlarsoruyor.com/egitim-kariyer/q1570478-cemaat-yurtlarında-kalan-var-mi>.

<sup>149</sup> BBC Turkish, "Şanlıurfa'da bir medresede ölü bulunan 12 yaşındaki Abdülbaki Dakak hakkında neler biliniyor?", 17 June 2023.



### Madrasah in Türkiye

With the Unification of Education Law No. 430, *madrasahs* were abolished in 1924 to ensure unity in education. However, despite the absence of a legal framework, many *madrasah* were opened during the Republic and continue to operate in Türkiye.<sup>150</sup> They offer religious instruction for boarding and day students. While there is no information on the number of *madrasah* and the number of students in Türkiye, a master's thesis published in 2020 lists 13 *madrasah* in Bitlis alone with an approximately 600 student capacity and fewer in attendance. Only boys can attend *madrasah*.

*Seyda*, a central figure in a *madrasah*, controls and regulates all the affairs of the *madrasah*. The *Seyda* has authority over the acceptance or rejection of students to be enrolled in the *madrasah* as well as the food, accommodations, and security.<sup>151</sup>

In 2012, the Presidency of Religious Affairs employed nearly a thousand graduates of *madrasah* education as imams and preachers in Eastern and Southeastern Türkiye under the "mullahs project". This indicates a certain recognition of these non-formal institutions.

A man, who chose to remain anonymous, shares with the press his experience when circumstances forced him to enrol in a *tarikah* dormitory as a high school student. He states that the school he attended did not offer student accommodations, and financial constraints made it impossible to afford private student housing, so his only option was to enrol at a *tarikah* dormitory. One of the key elements of his account is the forced participation in religious practices. He experienced coercion to participate in *namaz* prayers, despite having made it clear upon registration that he did not follow religious practices: "On the first day, they invited me to pray at the mosque in the dormitory, but I said, 'I don't pray, and Yusuf, the teacher who is responsible for the students in the dormitory, knows about this!' However, they sent me to prayer with humiliating words." He also recalls that students, aged 14 to 17, faced aggressive wake-up routines each morning: "Every morning at around 5:00-5:30, we were woken up by shouting and banging on the bunks with iron sticks." His experience also sheds light on the illegal status, acknowledged by teachers as well, of the community's dormitories. When questioned by residents about state oversight and enforcement, the response was: "God is with us, who is the state?" He also describes witnessing public officials and political figures frequently visiting the dormitory.<sup>152</sup> This reveals significant issues, including inadequate oversight by state authorities and a lack of necessary protection mechanisms.

Similar coercion is also experienced by university students. Even though they are not considered children under law, states still have an obligation to prevent coercion. One of the most tragic incidents in Türkiye that falls under the concept of religious violence has been the suicide of Enes Kara who was a successful student in

150 İ. Ürek, "Günümüz Bitlis Medreselerinde Mantık Eğitimi (Norşin Medreseleri örneği)", master's thesis, 2020.

151 Strateji Düşünce ve Analiz Merkezi, *Türkiye'de Medreseler ve Dini Eğitim*, 2016, p. 6.

152 Sol Haber, "Süleymanlıların yurdunda kalan öğrenci anlatıyor: Zorla namaz, şiddet, Atatürk portresine tükürük", 18 January 2022.



medical school and lived in a *tarikats* house in Elazığ. This sparked widespread public outcry and renewed calls for scrutiny of the involvement of *tarikats* and *cemaats* in education.<sup>153</sup>

Prior to his suicide, he shared a video explaining the pressure he had been experiencing to participate in religious practices. He said that he did not feel free and that his life had lost its meaning. Kara's suicide has become a striking symbol that represents one of the worst possibilities following religious abuse and violence and shows that, although women and girls are more disadvantaged in these situations, men, especially young men, are also targets of such violence. His case demonstrates the vulnerability of young people and the importance of the availability of affordable student housing for young adults.

Authorities often cover up or downplay religious abuse or violence incidents like these by labelling them as "isolated" or "rare". However, the examples we have given from an online blog, an association, an informal platform, and the tragic incident of a suicide that resonated all over society, show that these incidents are neither isolated nor uncommon. Hence, **religious violence should be recognized as a distinct issue, especially in the context of policymaking.**



### Safeguarding within religious or belief communities

Religious or belief communities play a critical role in safeguarding vulnerable individuals within their communities by fostering environments that prioritize respect, protection, and support.

They should:

- respect the autonomy of individuals, ensuring that participation in religious activities or practices is voluntary and free from coercion;
- establish policies to prevent coercion or violence, with clear guidelines on acceptable behaviour and mechanisms for addressing violations;
- set up independent oversight bodies to monitor practices, address complaints, and ensure adherence to safeguarding policies;
- provide comprehensive training for leaders, teachers, and members on recognizing and responding to vulnerabilities, coercion, and violence ensuring a culture of accountability;
- promote a culture where members feel safe to voice concerns or report abuse without fear of stigma or reprisal, supported by anonymous reporting mechanisms.

One of the focus group participants, who had worked as a supervisor of a *tarikats* dormitory/house, shared numerous examples of limitations imposed on the residents related to daily life activities, including going to the cinema:

<sup>153</sup> BBC Türkçe, "Enes Kara: Tıp öğrencisinin cemaat yurdunda intiharının ardından tepkiler", 11 January 2022.

For example, one of our agreements [with a dormitory/house resident] was not to go to the cinema. After a while, I began to find these agreements meaningless. I could not understand how someone could attend university and yet not go to the cinema. It became incredibly difficult to explain something that I did not understand to a student or a young girl. At this point we started to secretly go to the cinema all together. We would go to independent cinema discussions secretly and, think about it, it was the religious supervisor of the community doing this. At the same time, I would go to women's meetings, where I was asked to give talks on relationships with men and husbands, but I struggled with that too. All the hadiths I had memorized protected the approval of men. (Aktivist)

A woman's narrative on a news platform reveals the layers of violence perpetuated within religious institutions in Türkiye, spotlighting spiritual, emotional, and physical violence. Her vivid story begins with her experiences starting at age 11 in a boarding school focused on teaching the Quran, where children were subjected to militarized discipline: "Before morning prayers, you would open your eyes in a cold and dark place, with the sound of keys being banged on the iron bunks to make noise and with shouts. You would get up like a soldier – if you didn't, there was a punishment."<sup>154</sup> She emphasises that gender norms were strictly enforced, reinforcing the patriarchal order.

She recalls that women were symbolized as the keepers of family honour, their roles reduced to caregiving: "The most sacred duty of a woman is motherhood, and her primary place is the home." She also describes a scene where a teacher berates and pushes a girl for improperly tying her scarf, describing her "pale, frozen face." Such incidents to children at such a vulnerable age exemplify verbal violence and emotional abuse, contributing to a sense of guilt and shame.<sup>155</sup>

Another case, reported in the media, illustrates that allegations of religious pressure go beyond *cemaat* or *tarikât* operated dormitories to include a state-affiliated student dormitory, revealing a concerning pattern of coercion and intimidation. Students at Selahattin Aktar Student Dormitory claimed that the dormitory manager forced them to attend prayers, with non-compliance resulting in threats and even physical violence. One student describes being slapped and having official documents rejected for not participating in religious practices.<sup>156</sup>

These incidents indicate the abuse of authority and are a clear violation of personal freedom. **A systemic failure to provide a safe environment for students is evident, reflected in broad power abuses within educational institutions where authority figures impose religious and personal ideologies.** Hence, there is an urgent need for effective oversight and accountability to ensure students' access to safe housing and the protection of their rights.

<sup>154</sup> Medyascope, "Güneşin altındaki bütün cemaatlerin içine girip çıkma bahtına ermiş bir kadın anlatıyor", 23 December 2022.

<sup>155</sup> *Ibid.*

<sup>156</sup> Başka Gazete, "Bursa'da Milli Eğitim'e bağlı öğrenci yurdunda namaz baskısı iddiası", 24 November 2023.



### Supporting victims

Providing support to victims of coercion that infringes on the right to freely hold and practise religion or belief is crucial, as states are obligated to uphold and promote fundamental human rights. Such support also safeguards individual dignity, which coercion undermines by depriving individuals of their agency and compelling them to conform to beliefs or practices against their will. By assisting victims, their autonomy is restored, and their inherent dignity is reaffirmed.

#### Key principles across international human rights standards<sup>157</sup>

1. **Access to justice:** Victims should have equal access to judicial and administrative remedies.
2. **Reparation:** Victims should have access to restitution, compensation, and rehabilitation.
3. **Participation:** Victims have the right to be informed, consulted, and heard in legal processes.
4. **Protection and assistance:** States must ensure victims' safety and well-being during and after proceedings.
5. **Non-discrimination:** Support should be provided without discrimination based on ethnicity, race, gender, age, migrant status or other characteristics.



### Barnahus model: A child-centred approach to justice and protection

Barnahus, which translates as "children's house", provides a child-friendly, multidisciplinary setting where professionals from law enforcement, criminal justice, child protection, and medical and mental health services work together at one hub. The model, implemented in various European countries, aims to minimize trauma for children involved in violence cases while ensuring effective justice and protection. Key components include child protection, child-friendly forensic interviews, as well as medical and mental health examinations and treatment. Barnahus integrates its services into government systems and allows recorded interviews to serve as court evidence, reducing the need for children to testify in court. This model prioritizes the child's best interests by offering coordinated interventions tailored to their needs and by eliminating overlapping procedures.<sup>158</sup>

## 3.5 Concluding remarks and recommendations

International human rights law protects both freedom from coercion that would impair one's right to believe or not to believe and freedom from coercion to act in a manner contrary to one's religion or belief in an absolute manner. Robust international human rights standards protecting women and children are equally rel-

<sup>157</sup> "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", adopted by the UN General Assembly on 29 November 1985 by resolution 40/34; Council of Europe, "European Convention on the Compensation of Victims of Violent Crimes", 24 December 1983.

<sup>158</sup> Barnahus Network, [About Barnahus](#).

evant in the context of coercion. Türkiye's international human rights obligations alongside the constitutional protection against coercion underscore the normative demands on Türkiye to ensure that these commitments are fully implemented. The collective dimension of freedom of religion or belief protects religious or belief communities to manifest their religion or belief in worship, teaching, practice, and observance. This includes, among others, the establishment of charitable institutions and autonomy in the internal affairs of such communities. However, this is not absolute. This autonomy can be restricted and cannot be a justification for coercion. While parents have the right to raise their children in line with their religious or philosophical convictions, this is in no way a blank cheque. Parents must support their children to exercise their own right to freedom of thought, conscience, and religion or belief. This must be done in line with their evolving capacities and the best interest of the child should be the primary concern.

Public authorities, religious or belief communities, families, spouses or partners, in fact anyone, can be an agent or perpetrator of coercion. **It is, however, ultimately states' responsibility to take all the necessary measures to protect individuals against coercion. Such protection must include prevention of coercion, enforcement where there is a violation, and the provision of support to victims.**

It follows from the above that, although the concept of religious abuse and violence is somewhat new in Türkiye, and therefore open to further discussion, it is highly meaningful. Many different cases were easily identified and linked to the concept by focus group participants. The proximity of the presence of religious abuse and violence is immediate. Discussing these incidents in terms of religion is difficult as it can trigger negative responses and opposition due to "sensitivities". However, as one of the focus group participants stated, naming the issue is essential to providing a foundation for the survivors of religious abuse and violence.

There are multifaceted factors to be considered to prevent religious abuse and violence and support the survivors of these acts. These, in the Turkish context, have a long-term possibility where others can be implemented by different actors including advocates and civil society.

**The narratives shared by women who were compelled to wear the headscarf, or faced pressure when deciding to remove it, underline the deep emotional, psychological, and economic toll that such coercion exacts.** From young girls pressured to veil at an early age to women who face familial estrangement, financial vulnerability, and even mental health challenges after choosing to remove their headscarves, these experiences highlight the pervasive nature of control over women's bodies and choices.

Ultimately, addressing these challenges requires a multi-faceted approach that upholds human rights standards and prioritizes the protection of personal agency. By identifying both formal and informal mechanisms of coercion, fostering inclusive dialogue, and supporting women and young adults in their pursuit of autonomy, stakeholders can contribute to dismantling structures that perpetuate religious coercion or violence.

The experiences of coercion within *tarikats* and *cemaats* dormitories and residential houses demonstrate significant gaps in safeguarding vulnerable individuals, particularly children and young adults. These testimonies, while varied in intensity and context, reveal recurring patterns of coercion and violence. These require urgent attention and response from public authorities. **The narratives shared underscore how these unregulated environments, often cloaked in religious authority, create spaces where individuals are stripped of their autonomy and subjected to spiritual/religious, emotional, and sometimes physical violence.**

The frequent downplaying of such incidents as isolated or rare by authorities obscures their prevalence and systemic nature. **To address these issues, religious violence and coercion in dormitories and religious community housing must be explicitly recognized as a distinct challenge requiring urgent policy discussion and formulation.** Accountability and transparency are essential to dismantle the environments that enable coercion. This includes creating a legislative framework for religious or belief communities to have a legal entity status where they can transparently engage in charity work, ensuring accessible reporting mechanisms, holding perpetrators accountable, and implementing safeguarding measures that align with Türkiye's obligations under international human rights standards.

#### RECOMMENDATIONS FOR LEGISLATIVE AND POLICY MEASURES

- Türkiye should ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
- Laws encouraging the reporting of coercion, violence, or abuse against women and children should be adopted.
- The authorities should ensure that confidentiality rules for professionals do not prevent the reporting of suspected coercion or violence.
- The protection of the collective dimension of freedom of religion or belief should be strengthened by changing legislation to enable religious or belief communities to acquire legal personality and thus engage in religious charitable work with accountability and transparency in place.
- Regulations and oversight of educational institutions, including religiously affiliated schools, should be strengthened in line with international human rights standards through registration, inspections, and anonymous reporting mechanisms.
- Freedom of expression and religion should be safeguarded for individuals who embrace different readings of sacred texts and may be critical of dominant religious doctrines.

#### RECOMMENDATIONS FOR INCLUSIVE AND OBJECTIVE RELIGIOUS EDUCATION

- Public and private education on religion or belief should comply with applicable international human rights standards.

#### RECOMMENDATIONS FOR VICTIM SUPPORT AND PROTECTION

- Helplines and other information services should be established to provide confidential advice and support.
- Both short- and long-term support for victims, ensuring access to justice and psycho-social recovery, should be provided.
- State-operated dormitories should be expanded to offer safe and neutral accommodations.
- Specific needs of survivors of religious violence should be identified through insights from civil society organisations, and support services should be enhanced accordingly.

#### RECOMMENDATIONS FOR TRAINING AND CAPACITY BUILDING

- Public authorities should be trained on freedom of religion or belief, human rights, and non-violent communication.
- Partnerships between women's and human rights organizations should be promoted to monitor and address religious pressure and violence.
- Platforms advocating against religious abuse and violence should be supported in developing policies and survivor assistance programmes.

#### RECOMMENDATIONS FOR THE REGULATION AND TRANSPARENCY OF RELIGIOUS COMMUNITIES

- Religious communities should be institutionalized and registered to ensure transparency in their educational processes.
- Safeguarding measures should be implemented to prevent abuse; claims against religious leaders or teachers should be thoroughly investigated.
- The inclusivity of the Directorate of Religious Affairs should be broadened to reflect diverse Islamic interpretations and uphold freedom of religion or belief and gender equality.

#### RECOMMENDATIONS FOR DATA COLLECTION AND PUBLIC DISCUSSION

- Comprehensive data, adapted to the Turkish context, should be collected to analyse religious abuse and violence and inform advocacy efforts.
- Religious pressure and violence in various aspects of life should be monitored, integrating insights into policy development.
- Public discussions with civil society actors on religious violence should be promoted – especially in cases of domestic and gender-based violence.



## 4. Protection of freedom of expression in the context of freedom of religion or belief

### 4.1 Introduction and methodology

This study examines prohibitions on the criticism of religion in Türkiye.<sup>159</sup> While religious freedom is a fundamental human right protected in modern democracies, debates about the limits and scope of this freedom persist. **Prohibiting criticism of religion not only undermines freedom of expression but also restricts individuals' rights to question, critique, and reassess their beliefs.** Such restrictions significantly hinder the development of individual free thought and impede social progress.

This article, focusing primarily on court rulings, explores the boundaries between freedom of religion or belief, and criticism. However, apart from Constitutional Court (*Anayasa Mahkemesi*, AYM) rulings, the judgments of higher courts and courts of first instance are not transparently accessible. Because of this, rulings outside of the AYM could not be comprehensively reviewed. The relevant rulings were accessed through paid legal databases, references in academic literature, and consultations with attorneys involved in publicly reported cases. Although this limitation on accessible court decisions does not allow for a full depiction of the legal landscape, rulings that reflect the broader picture on the issue were referenced, and this jurisprudence was conveyed with a critical perspective. This approach enabled an evaluation from a broad and critical perspective. The findings and recommendations are presented in the conclusion section.

### 4.2 Conceptual clarifications

This section addresses the meanings of key concepts relevant to this study. In this respect, it is essential to begin with the concepts of freedom of expression and freedom of religion or belief, which are sometimes assumed to be in conflict.

#### 4.2.1 Freedom of expression

**Freedom of expression is a fundamental human right and serves as a cornerstone for all other freedoms enshrined by the United Nations (UN).**<sup>160</sup> It is an essential precondition for individual development and progress, as well as a fundamental element of democratic societies.<sup>161</sup> The term "expression" encompasses all forms of external manifestations of thought. In addition to traditional written forms, expression can include painting, photography, music, cartoons, theatrical plays, declarations, text messages, commercial advertisements, clothing, nudity and even, in some instances, acts bordering on vandalism. Such forms of expression may fall

<sup>159</sup> I would like to thank Dr. Mine Yıldırım, Research Assistant Ceren Hilal Günaydın, and Research Assistant Furkan Yılmaz for their insights and contributions to the writing of this article.

<sup>160</sup> UN General Assembly Recommendation, 1946.

<sup>161</sup> ECtHR, *Handyside v. The United Kingdom*, App. No: 5493/72, 7 December 1976, para. 49.



within the scope of freedom of expression.<sup>162</sup>

The right to freedom of expression is not absolute. Interferences with this right may be justified if they serve lawful and legitimate purposes and adhere to the principles of necessity and proportionality within a democratic society. Legitimate grounds for such restrictions are outlined in Article 26(2) of the Constitution of Türkiye, as well as Article 10(2) of the European Convention on Human Rights (ECHR).

In principle, every form of expression is presumed to fall within the "scope" of freedom of expression. However, the inclusion of an expression within the scope of this right does not necessarily render interference with it unjustifiable. The distinction between an act falling outside the scope of freedom of expression and a justifiable restriction of such freedom is significant:

1. For instance, an individual's act of drinking beer, in the absence of any specific context, cannot be considered a form of expression. Consequently, it falls outside the "scope" of freedom of expression.
2. Certain acts classified as abuses of rights under human rights law (Article 17 of the ECHR and Article 14 of the Constitution) may appear to be abstract expressions but are categorically excluded from this scope due to their anti-freedom nature.

In the first case we have an abstract act that falls outside the scope of freedom of expression simply because it is not expression. In the second, what appears to be abstract, but is actually expression, must be excluded because of its anti-freedom nature.

Article 20 of the International Covenant on Civil and Political Rights (ICCPR) of the UN explicitly categorises certain situations as outside the scope of freedom of expression due to their anti-freedom nature. These provisions, and this perspective, indicate that expressions amounting to "any form of war propaganda, or the promotion of national, racial, or religious hatred that incites discrimination, hostility, or violence" fall outside the scope of freedom of expression.

## 4.2.2 Freedom of religion or belief

Defining the legal meaning of the terms "religion" or "belief", within the context of freedom of religion or belief, is not straightforward. The European Court of Human Rights (ECtHR) asserts that a personal or collective belief, provided it meets a certain threshold of cogency, seriousness, cohesion, and importance, falls under the scope of "freedom of thought, conscience, and religion".<sup>163</sup> Once these conditions are met, the Court asserts that the state, in its role as a neutral and impartial entity, has no authority to assess the legitimacy of religious beliefs or how they are expressed.<sup>164</sup> **The ECtHR maintains that the state should refrain from participating**

<sup>162</sup> For details and examples see: T. Şirin, "Türkiye'de Düşüncenin Tutsaklığı-2", İstanbul, Tekin Yayınevi, 2021, p. 38-46.

<sup>163</sup> *Eweida and Others v. The United Kingdom*, App. No: 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013, para. 81.

<sup>164</sup> *Ibid.*, para. 81.

in religious debates, should not determine which principles and beliefs form the foundation of a religion, and is not entitled to offer interpretations on religious matters.<sup>165</sup> In this regard, discussions concerning the historical foundations of a particular religion or the demands of its followers are not sufficient grounds to discredit the religious character of those beliefs. In other words, internal debates within a religious or belief community, as well as the state's stance on these matters, are irrelevant.<sup>166</sup>

The concept of freedom of religion or belief is often discussed alongside the concepts of freedom of thought, conscience, and opinion. The connection between these concepts suggests that, within this category of freedoms, there are approaches related to religion or belief, yet of a non-religious nature. The ECtHR also confirms that Article 9 of the Convention encompasses both "the freedom to have or **not to** have religious beliefs and the freedom to practice or **not practice** a religion".<sup>167</sup>

In German literature, the freedom of religion or belief is explored as a broad concept through the notions of "negative religious freedom" (*negative Religionsfreiheit*) and "positive religious freedom" (*positive Religionsfreiheit*).<sup>168</sup> In English legal literature, this distinction is expressed as "freedom of religion" and "freedom from religion".<sup>169</sup> The former refers to the right to practise or fulfil the obligations of a religion or belief, while the latter pertains to the freedom from religious imposition.

This study adopts the concept of freedom of religion or belief in both its positive and negative senses. Furthermore, as clearly demonstrated in case law, the protection offered by freedom of religion or belief is primarily based on safeguarding individuals (whether natural or legal persons), not the protection of religions or beliefs themselves.<sup>170</sup>

It remains a highly contentious issue whether the freedom of religion or belief guarantees individuals the "right to be protected from having their religious feelings hurt". The view that freedom of religion or belief does not provide such protection is notable in legal doctrine.<sup>171</sup> In this regard, the ECtHR's case law to date indicates that it has not deemed claims of harm to individuals' religious feelings admissible (as of yet), nor has it ruled such claims to constitute a violation (as of yet). On the other hand, in applications concerning claims of violations of freedom of expression, the ECtHR considers "respect for religious feelings" within the scope of Article 9 and takes it into account when assessing the legitimate purpose of the

165 *İzzettin Doğan and Others v. Türkiye* [GC], App. No: 62649/10, para. 69.

166 *Ancient Baltic Religious Association "Romuva" v. Lithuania*, App. No: 48329/19, 8 June 2021, para. 118-119.

167 ECtHR, *Leyla Şahin v. Türkiye* [GC], App. No: 44774/98, 10 November 2005, para. 66.

168 See: Heiner Bielefeldt, "Streit um die Religionsfreiheit: Aktuelle Facetten der internationalen Debatte", Friedrich-Alexander Universität Erlangen, 2012, p. 17; Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief", 35:1 Human Rights Quarterly, 2013, p. 49.

169 See: T. Şirin, "İfade Özgürlüğü, Dinin veya Dini Duyguların Korunması Amacıyla Sınırlanabilir mi?", *Anayasa Hukuku Dergisi*, 5(10), 2016, p. 543.

170 See: P. M. Taylor, "Freedom of Religion: UN and European Human Rights Law and Practice", Cambridge University Press, 2005.

171 See: G. Letsas, "Is There a Right Not to Be Offended in One's Religious Beliefs?", *Law, State and Religion in the New Europe*, L. Zucca and C. Ungureanu (Ed.), Cambridge: Cambridge University Press, 2012, p. 239-260.

interference with freedom of expression.<sup>172</sup> The ECtHR's jurisprudence indicates no objection to either recognising the protection of religious feelings as a right under domestic law, and to considering interferences to protect this right to be legitimate. In fact, it clearly demonstrates that such protection is closely linked to the guarantees set out in Article 9 of the Convention.

Türkiye's only constitution that references "religious feelings" is the Constitution of 1982. However, the phrase, "as required by the principle of secularism, there shall be no interference whatsoever of sacred religious feelings in State affairs and politics", which appears early in the Constitution, is interpreted as reinforcing secularism rather than integrating these feelings into the framework of religious freedom. Similarly, under the Turkish Penal Code (TCK), theft by deception involving "exploiting the religious beliefs and emotions of a person" amounts to "qualified theft by deception".<sup>173</sup>

Although potentially controversial, the above findings indicate that religious feelings are not disregarded in the applicable legal provisions.



### Concepts at the intersection of freedom of expression and freedom of religion or belief

In English literature, as the relationship between freedom of expression and freedom of religion or belief is explored, three concepts are especially prominent: "Blasphemy", "defamation of religion", and "incitement to religious hatred".

**Blasphemy:** The Council of Europe's Committee on Culture, Science and Education defines "blasphemy" as "the offence of insulting or showing contempt or lack of reverence for god and, by extension, toward anything considered sacred".<sup>174</sup> International reports often classify Article 216(3) of the TCK as a provision related to "blasphemy". Given the content of this regulation, the term "blasphemy" may be best understood in the Turkish legal context as "insulting religious values".

**Defamation of religion:** This term, frequently used by the UN, encompasses a broader range of expressions, including "religious insult", "insult based on belonging to a particular religion", and "offence to religious feelings". The term is sometimes used to cover various forms of expression such as "religious insult", "insult based on a particular religious affiliation" and "offence to insult to religious feelings".<sup>175</sup> "Defamation of religion" is typically understood as "criticism or ridicule of religious practice or belief whether reasoned, satirical or contemptuous". Despite nuances

<sup>172</sup> See: ECtHR, *Otto-Preminger-Institute v. Austria*, 20 September 1994, para. 47; ECtHR, *Wingrov v. The United Kingdom*, App. No: 17419/90, 25 November 1996, para. 48; ECtHR, *Klein v. Slovakia*, App. No: 72208/01, 8 November 2005, para. 47; ECtHR, *Aydın Tatlav v. Türkiye*, App. No: 50692/99, 2 May 2006, para. 23; *Sekmadienis Ltd v. Lithuania*, App. No: 69317/14, 30 January 2008, para. 69; ECtHR, *E. S. v. Austria*, App. No: 38450/12, 25 October 2018, para. 41; ECtHR, *Rabczewska v. Poland*, 15 September 2022, para. 55.

<sup>173</sup> TCK 158(1/a).

<sup>174</sup> For this phrase, see: Committee on Culture, Science and Education, Report on "Blasphemy, Religious Insults and Hate Speech Against Persons on Grounds of Their Religion", (Doc. 11296), 8 June 2007.

<sup>175</sup> L. Christians et al., Venice Commission, "Report on the Relationship between Freedom of Expression and Freedom of Religion: The Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred", CDL-AD(2008)026, 23 October 2008, para. 28.

distinguishing the two terms, defamation of religion and blasphemy are often used interchangeably in most contexts. The latter is a historically loaded concept with deep roots in canon law, while the former is more contemporary.

**Incitement to religious hatred:** This concept refers to hate speech within the religious context. Its added dimension of such hatred being incited against disadvantaged groups distinguishes hate speech from simple insults to religion or hurting religious feelings.<sup>176</sup>

### 4.3 International law

The relevant international legal sources concerning blasphemy and religious hate speech may be examined within both the UN system and the European framework.

#### *Blasphemy*

A joint report by UN Special Rapporteurs on "Freedom of Religion or Belief" and "Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance" highlights the potential for national blasphemy laws to foster an environment of intolerance, limit scholarship on religious issues, and stifle honest debate and research.<sup>177</sup> The Special Rapporteur on Freedom of Religion or Belief notes that incidents consistently demonstrate the concerning impacts of blasphemy laws on religious minorities as well as critics of religion or dissidents. As a result, the recommendation is made that blasphemy laws be repealed.<sup>178</sup>

The UN Human Rights Committee's (the Committee) General Comment No. 34 on Article 19 of the ICCPR, concerning "Freedom of Opinion and Expression", asserts that blasphemy laws are generally incompatible with the ICCPR, barring exceptional circumstances.<sup>179</sup>

The Rabat Plan of Action, which consolidates many of these insights, suggests that **"states that have blasphemy laws should repeal them, as such laws have a stifling impact on the enjoyment of the right to freedom of religion or belief and healthy dialogue and debate about religion."**<sup>180</sup>

The resolutions of the UN Human Rights Council (HRC), in particular 16/18 and 53/1, demonstrate a noteworthy shift in terminology and how the HRC treats these matters. The Council's 2011 Resolution 16/18 can be seen as a consensus on the use of the terms "religious intolerance" and "discrimination" rather than "blasphemy" and "defamation of religion".<sup>181</sup> However, in July 2023, for the first time since the consensus on Resolution 16/18, the annual resolution on "countering religious hatred con-

<sup>176</sup> *Ibid.*, para. 64.

<sup>177</sup> The UN Human Rights Council, [A/HRC/2/3](#), para. 42, 2006.

<sup>178</sup> UN Special Rapporteur on Freedom of Religion or Belief, "Tackling Manifestations of Collective Religious Hatred", [A/ HRC/ 25/ 58](#), 26 December 2013, para. 59, 70 (e).

<sup>179</sup> UN Human Rights Committee, General Comment No. 34 on Article 19 on "Freedom of opinion and expression", [CCPR/C/GC/34](#), 29 July 2011, para. 48.

<sup>180</sup> UN High Commissioner for Human Rights, "Report of the United Nations High Commissioner for Human Rights on the Expert Workshops on the Prohibition of Incitement to National, Racial or Religious Hatred", [A/ HRC/22/17/Add.4](#), 11 January 2013, para. 19.

<sup>181</sup> UN Human Rights Council, [A/HRC/RES/16/18](#), 12 April 2011.

stituting incitement to discrimination, hostility or violence" was adopted via majority vote rather than consensus.<sup>182</sup> This shift was prompted by the inclusion of a statement that closely linked the burning of the Quran and other holy texts to incitement, effectively classifying it as potentially prohibited expression. Additionally, in contrast to the previously outlined legal framework, the resolution places significant emphasis on criminal prosecution as the primary response to the defamation of religious symbols, texts, and places of worship.

Article 20 of the ICCPR requires a high threshold, as restrictions should be exceptional in the context of freedom of expression. The Rabat Plan of Action recommends that "each of the six parts of the threshold test needs to be fulfilled in order for a statement to amount to a criminal offence."<sup>183</sup>



### The threshold test of the Rabat Plan of Action<sup>184</sup>

**1. Context:** Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility, or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated.

**2. Speaker:** The speaker's position or status in the society should be considered, specifically the individual's or organization's standing in the context of the audience to whom the speech is directed.

**3. Intent:** Article 20 of the ICCPR anticipates intent. Negligence and recklessness are not sufficient for an act to be an offence under article 20 of the ICCPR, as this article provides for "advocacy" and "incitement" rather than the mere distribution or circulation of material. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience.

**4. Content and form:** The content of the speech constitutes one of the key foci of the court's deliberations and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed.

**5. Extent of the speech act:** Extent includes such elements as the reach of the speech act, its public nature, its magnitude and size of its audience. Other elements to consider include whether the speech is public, what means of dissemination are used, for example by a single leaflet or broadcast in the mainstream media or via the internet, the frequency, the quantity and the extent of the communications,

<sup>182</sup> UN Human Rights Council, [A/HRC/RES/53/1](#), 17 July 2023.

<sup>183</sup> The Rabat Plan of Action, [A/HRC/22/17/Add.4](#), 11 January 2013.

<sup>184</sup> [The threshold test of the Rabat Plan of Action](#).

whether the audience had the means to act on the incitement, whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public.

**6. Likelihood, including imminence:** Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.

In light of the above, it could be asserted that the UN system, in its current form, does not take a supportive stance on blasphemy laws.

Likewise, "EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief", adopted by the European Union's (EU) Foreign Affairs Council, indicate that the EU does not endorse blasphemy laws.<sup>185</sup> A similar view is reflected within the Council of Europe. In its recommendation on "Blasphemy, religious insults and hate speech against persons on grounds of their religion", the Parliamentary Assembly of the Council of Europe asserts that blasphemy should not be considered a criminal offence.<sup>186</sup>

This position is further supported by the "Report on the Relationship between Freedom of Expression and Freedom of Religion" issued by the European Commission for Democracy through Law (Venice Commission).<sup>187</sup> The Commission similarly advocates for the abolition of blasphemy as a criminal offence. While sanctions, such as claims for damages, may be imposed in such cases, it is essential to ensure that such measures do not exert a chilling effect on freedom of expression.<sup>188</sup>

The case law of the ECtHR concerning religious values, however, remains highly controversial. When addressing religion, religious values, and even religious feelings, the Court tends to restrict the broader standard of freedom of expression it typically upholds. For example, "religious feelings" is not explicitly mentioned in Article 9 of the Convention, and there is no case law addressing this concept. Nevertheless, in certain cases, the Court recognises the protection of "religious feelings" as a legitimate basis for restricting freedom of expression under Article 9.<sup>189</sup>

<sup>185</sup> Foreign Affairs Council of the European Union, "[EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief](#)", 24 June 2013, para. 32.

<sup>186</sup> Parliamentary Assembly of the Council of Europe, [Doc. 11319](#), 29 June 2007, para. 4-10.

<sup>187</sup> For the report on "The Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred" that was adopted by the Venice Commission at its 76th session on 17-19 October 2008, see: L. Christians, P. van Dijk and F. Flanagan, "[On the Relationship between Freedom of Expression and Freedom of Religion](#)", CDL-AD(2008)026, 23 October 2008.

<sup>188</sup> *Ibid.*, para. 55, 62-55.

<sup>189</sup> See above 169, p. 537

The following table offers a summary of the Court's highly controversial jurisprudence:

Judgment	Freedom of expression
<i>Otto-Preminger-Institut v. Austria (1994)</i>	No violation
<i>Wingrove v. The United Kingdom (1996)</i>	No violation
<i>İ.A. v. Turkey (2005)</i>	No violation
<i>Aydın Tatlav v. Turkey (2006)</i>	Violation
<i>Klein v. Slovakia (2006)</i>	Violation
<i>Sekmadienis Ltd. v. Lithuania (2018)</i>	Violation
<i>E.S. v. Austria (2018)</i>	No violation
<i>Tagiyev and Huseynov v. Azerbaijan (2019)</i>	Violation
<i>Gachechiladze v. Georgia (2021)</i>	Violation
<i>Rabczewska v. Poland (2022)</i>	Violation

As demonstrated, in cases involving the tension between freedom of expression and the protection of believers from expressions that are offensive or perceived as offensive to their beliefs, instances where interference with freedom of expression has been justified are relatively rare. Nonetheless, the body of decisions on this issue, rooted in the Court's early jurisprudence, remains pertinent, as highlighted by the *E.S. v. Austria* ruling of 2018.

In cases where the Court does not find the state in violation of freedom of expression, it holds that the restriction was justified by applying the criterion that the expression in question is considered "highly offensive" or "unduly offensive and disrespectful". The Court also takes into account whether such expressions might hurt feelings or provoke outrage.

On the other hand, it appears that the ECtHR approaches the freedom of expression of individuals from certain segments of society with sensitivity, aiming to raise the tolerance threshold for freedom of expression. This threshold can be seen to have been raised to the extent that individual Sharia advocacy is not considered hate speech, as demonstrated in the *Gündüz v. Türkiye* case.<sup>190</sup> It can be argued that while the Court adopts a stricter stance against Sharia-based organizations, it grants greater freedom to individuals promoting Sharia-based views.<sup>191</sup>

It is difficult to understand and agree with the ECtHR's approach as it contradicts its own jurisprudence on hate speech. Statements by individuals that would typically qualify as hate speech under established case law are not treated as such when this hatred evolves into a systematic form of governance, i.e., in more collective contexts. This inconsistency may pave the way for abuse, enabling individuals with totalitarian aims to justify their statements under the guise of freedom of religion or belief. It is essential to underscore, however, that the right to freedom of religion or belief should not serve as a ground to infringe upon any rights enshrined in the Convention.

<sup>190</sup> *Gündüz v. Türkiye*, App. No: 35071/97, 4 December 2003.

<sup>191</sup> *Zehra Foundation and Others v. Türkiye*, 2018, para. 55.

## Religious hate speech

The ECtHR differentiates between blasphemy and religious hate speech. Since hate speech is associated with the abuse of rights and is broadly regarded as a form of violence, it is subject to distinct criteria. In this context, a failure to thoroughly investigate the motives of perpetrators can also be considered a violation of freedom of religion or belief.<sup>192</sup>

A crucial issue in this regard is determining the boundary between insulting religious feelings and religious hatred. In the view of the ECtHR, the mere perception of offence or derogation by certain groups or individuals does not, in itself, qualify a statement as "hate speech". While such feelings may be understandable, they cannot alone delineate the limits of freedom of expression. If offensive language constitutes undue insult, it may fall outside the scope of protected expression. However, vulgarity is not the sole determinant when evaluating whether an expression is offensive, as coarse language may also serve stylistic purposes.<sup>193</sup> An individual's use of harsh or vulgar language in their statements may not always be intended to offend or harm others. The use of language may merely reflect a preference for a particular style, tone, or form of artistic expression beyond its meaning.

## 4.4 National law

The main branches of the judiciary in Turkish national law concerning the matter are ordinary jurisdiction, administrative jurisdiction, and constitutional jurisdiction. The high courts associated with these branches are the Court of Cassation, the Council of State, and the Constitutional Court. This section, which explores investigations that did not escalate into court cases, also warrants a separate examination of decisions made by the Radio and Television Supreme Council (RTÜK), as these represent a distinct area of concern.

### 4.4.1 RTÜK decisions

Not all the RTÜK decisions are accessible on the official website. Consequently, the review that underpins this report is based on a limited number of decisions.<sup>194</sup>

### The grounds for interference with freedom of expression

Article 8 of the RTÜK Law, titled "The Principles of Broadcasting Services", is particularly important in relation to freedom of expression. In the first paragraph of this article, the prohibitions against "inciting society to hatred and hostility by making discrimination on the grounds of religion and sect or constituting feelings of hatred in the society"<sup>195</sup> and "discriminating or encouraging discrimination on the basis of religion, philosophical opinion, sect and any such considerations"<sup>196</sup> are directly rele-

<sup>192</sup> Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) and Steering Committee on Media and Information Society (CDMSI), "Compilation of Promising Practices on Combating Hate Speech at National Level", CoE Publishing, 2024, p. 40.

<sup>193</sup> *Sokolovskiy v. Russia*.

<sup>194</sup> The review encompassed decisions from 2013 onwards. As of August 2024, the earliest available decision dates back to 2008. The search filter, however, can only be applied to decisions from 2013 onward: [The Archive of Supreme Council Decisions](#).

<sup>195</sup> The Law No. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services, 8(b).

<sup>196</sup> *Ibid.*, 8(e).



vant to the matter. These provisions refer to "religious hate speech" and "prohibition of discrimination based on religion and sect", respectively.

Furthermore, the prohibitions in the aforementioned sub-paragraphs – specifically those against "disgracing, degrading or defamatory expressions against persons or organizations beyond the limits of criticism"<sup>197</sup> and being "contrary to the national and moral values of the society, general morality and the principle of protection of family"<sup>198</sup> – can also serve as grounds for sanctions, depending on the context.

### General approach to insulting religious values

The RTÜK Law does not contain any provisions that explicitly prohibit "religious insult". As previously noted, the law prohibits "religious hate speech" and "discrimination based on religion and sect," but it does not address "religious insult". **The Supreme Council's approach of subjecting religious insults to sanctions is an interpretation that goes beyond the legislative intent and contradicts the law.** This problematic interpretation is also incompatible with the principle of secularism. In a secular state, the protection of individuals' freedom of religion or belief should take precedence over the protection of religion as an institution.<sup>199</sup>

Nevertheless, this interpretation, which contradicts the law and the Constitution in the context of secularism, is readily enforced and any form of criticism directed at religion (privileging Islam) is almost categorically subjected to sanctions.

### Subjecting criticism of Islam to sanctions

To begin, it can be argued that the RTÜK lacks an anti-discriminatory sensitivity in its treatment of statements targeting individuals who are considered non-Muslim or not religious by certain groups. An example of this can be seen in the RTÜK's response to historian Kadir Mısıroğlu, who, on a newscast, referred to Koç Holding executives Mustafa Rahmi Koç and Y. Ali Koç with expressions such as, "You are not apostates. You were born *gâvur*", and "You do not need to be afraid of being punished. Non-Muslims had taverns and, forgive me, brothels during the Ottoman Empire". While the RTÜK, following a complaint, considered these statements to be derogatory expressions against individuals, it did not identify a problem within the framework of the prohibition against featuring and encouraging "broadcasts which discriminate on the basis of religion, sect (...)"<sup>200</sup>. However, it is important to note that the term '*gâvur*', which can be translated as 'infidel', carries an offensive connotation in Turkish, and its usage in a TV programme perpetuates a discriminatory discourse.

On the other hand, the RTÜK does not apply the same level of flexibility when it comes to criticism of Islam, whether it comes from believers or non-believers. **The RTÜK's decisions clearly demonstrate that any form of critique of Islamic norms is met with sanctions.** Publicly noted cases illustrate this stance.

<sup>197</sup> *Ibid.*, 8(ç).

<sup>198</sup> *Ibid.*, 8(f).

<sup>199</sup> See: The General Criminal Chamber of the Court of Cassation, E. 2000/4-116, K. 2000/121, 30 May 2000; AYM, 11/26, 4 November 1986.

<sup>200</sup> RTÜK, T. No. 2015/43, K. No. 7, 7 October 2015.

For instance, in response to remarks made by writer Sevan Nişanyan in a TV programme on October 15, 2012, the RTÜK issued a warning to the broadcasting channel.<sup>201</sup> During the programme, Nişanyan made statements about Islam and its prophet, saying:

"An Arab leader who claims to communicate with Allah... I regard the profession of a prophet as originating from a very primitive phase in history... I believe that Islam (...) is a religion not grounded in reality... It is a belief system based on outdated and false superstitions... I see it as my duty to criticize this."

When host Enver Aysever asked, "You are an atheist, aren't you?" Nişanyan responded, "Of course, like anyone who is sane." The RTÜK deemed these statements "incompatible with the moral values of society" and "discriminatory on the grounds of religion, sect, etc."<sup>202</sup> This stance suggests that televised statements critical of religion, which may offend or upset believers, should be subject to sanctions.

This situation suggests that criticism of religion is effectively prohibited within RTÜK's framework. From an atheist's perspective, the Prophet of Islam is not someone who communicates with Allah, but someone who "claims" to do so. Therefore, in this view, Islam is not based on reality and considering it as such is seen as an irrational stance. Someone who does not think this way would not be an atheist anyway. Prohibiting the expression of this view effectively prohibits the expression of atheistic thoughts.

The following examples further demonstrate that the expression of atheistic ideas, as well as Islamic views that fall outside mainstream acceptance, are restricted:

- the sanction imposed for the expression of atheist views by journalist Ayşe Hür in a Habertürk TV programme;<sup>203</sup>
- the fine imposed for the statements made by Professor Celal Şengör in a Habertürk TV programme regarding Prophet Abraham: "They are all mere fairy tales... All of them... There is no evidence to suggest that a man named Abraham ever existed";<sup>204</sup>
- the sanction imposed for Foça Mayor Fatih Gürbüz's criticism of the Islamic practice of "sacrifice";<sup>205</sup>
- the warning issued on Spotify regarding "playlists about Allah (c.c.), Hz. Muhammed, Hz. Adam, Hz. Ali" with a directive for these contents to be removed from the platform;<sup>206</sup>
- the warning issued to the TV channel STV for depicting the Prophet of Islam as a beam of light in a TV series.<sup>207</sup>

201 RTÜK, T. No. 2012/62, K. No. 18, 14 November 2012.

202 RTÜK, T. No. 2012/62, K. No. 18, 14 November 2012.

203 RTÜK, T. No. 2013/64, K. No. 26, 27 November 2013.

204 RTÜK, T. No. 2022/32, K. No. 5, 17 August 2022.

205 RTÜK, T. No. 2022/32, K. No. 8, 17 August 2022.

206 RTÜK, T. No. 2022/32, K. No. 7, 17 August 2022

207 RTÜK, T. No. 2014/63, K. No. 50, 17 December 2014. This decision was also approved by the Council of State: The 13th Chamber of the Council of State, E. 2015/170, K. 2015/170, 23 February 2015.

## The expansion of selective protection of Islam

RTÜK's inconsistent attitude towards critical discourse is evident not only in the context of Islam in general but also in the context of political Islamism. For example, an administrative fine was imposed on a TV channel for Merdan Yanardağ's criticism of political Islam in a programme broadcast on October 6, 2021.<sup>208</sup>

In another episode of the same programme, aired on October 11, 2023, Political Scientist Prof. Dr. Emre Kongar described the current administration as an "Islamist, fascist alliance", "Islamofascist", and "a fascist regime based on religious reactionism", which was deemed insulting and degrading to institutions. As a result, the programme was fined.<sup>209</sup>

The strict stance towards criticisms directed not at a religion or its practices, but at political Islamism as a political movement, is inconsistent and therefore discriminatory, especially when harsh statements about other political actors (such as the Kemalists) and movements are not considered discrimination or hate speech.<sup>210</sup> This inconsistency becomes even more apparent when statements targeting the Presidency of Religious Affairs, Imam Hatip schools, religious communities, or key historical figures within these movements are subjected to sanctions.

**Directorate of Religious Affairs** - In recent years, the DİB has been increasingly criticised for establishing itself as a kind of "sheikhulislam" authority.<sup>211</sup> The DİB was found to lack religious impartiality in the ECtHR ruling *İzzettin Doğan and Others v. Türkiye*,<sup>212</sup> and yet this recent criticism of it has become a frequent target for investigation.

The following two examples illustrate this issue clearly:

- on April 30, 2020, in a prime-time news programme on TELE 1, the anchor's criticism of the DİB for its statement "Pandemic Commentary from DİB, Coronavirus Outbreak is a Divine Warning from Allah" led to a five-day broadcasting suspension;<sup>213</sup>
- on September 20, 2022, the Turkish Workers' Party deputy Sera Kadıgil's criticism of DİB in a programme was deemed to incite hatred and hostility, and the broadcasting channel received a three-day broadcasting suspension.<sup>214</sup>

What is particularly concerning about the latter case is that even the criticism based on the ECtHR's judgement in *İzzettin Doğan and others v. Türkiye* case is subject to sanctions, while the legislative irresponsibility of MPs is disregarded.<sup>215</sup>

208 A fine of 43,603.00 TL was imposed. RTÜK, T. No: 2021/42, K. No: 17, 27 October 2021.

209 A fine of 85,738.00 TL was imposed. RTÜK, T. No: 2023/45, K. No: 26, 17 November 2023.

210 For examples related to discourses about claims that the Kemalist period and the CHP administration were "enemies of Allah", see: RTÜK, T. No: 2014/56, 6 November 2014, K. No: 28.

211 For an example of early criticism, see: İ. Arsel, "Devletin Anayasa'ya Ters Düşen Davranışları", Ankara Üniversitesi Hukuk Fakültesi Dergisi, 31(1), 1974, p. 28.

212 *İzzettin Doğan and Others v. Türkiye*, App. No: 62649/10, 26 April 2016.

213 RTÜK, T. No: 2020/27, K. No: 10, 1 July 2020.

214 RTÜK, T. No: 2022/41, K. No: 5, 19 October 2022.

215 T. Şirin, "TELE 1 karan ve Babanzâde İsmail Hakkı Bey'den RTÜK'e yanıt", T24, 28 February 2023.

**Imam Hatip schools** - It could be argued that the RTÜK is overly sensitive to criticism of Imam Hatip schools. It can be claimed that this is in line with the role – the aim of transforming society along religious lines – that the political Islamist movement is said<sup>216</sup> to have attributed to these schools. A prime example of this is Prof. Dr. Celal Şengör's criticism of Imam Hatip schools in a programme on the RS FM radio channel, which led to a fine from the RTÜK due to these sensitivities.<sup>217</sup>

Another example occurred on July 31, 2018, during a TELE 1 programme where Merdan Yanardağ and Prof. Dr. Emre Kongar's criticism of Imam Hatip schools was deemed to incite hatred, resulting in a fine for the channel.<sup>218</sup>

**[Islamic] Religious communities** - Religious communities are a prominent issue in human rights law, particularly in the context of their legal personality.<sup>219</sup> In this regard, it is important to note an issue that arises in relation to Law No. 677 on the Closure of Dervish Lodges and Tombs and the Prohibition and Abolition of Tomb Keepers and Certain Titles, which is listed under the "Laws of Reform" in Article 174 of the Constitution.<sup>220</sup> This law prohibits the association of religious communities. Despite this, the criticism that political Islamist movements in Türkiye, especially, favour Islamic religious communities and seek to consolidate social and political power through them is notable.<sup>221</sup>

RTÜK's decisions align with these criticisms. Any criticism directed at (Islamic) religious communities is easily subject to sanction. For instance, Fox TV was hit with two broadcast bans and fines because of the TV series "Crimson Buds" (*Kızıl Goncalar*) due to the fictional characters' remarks, such as: "His father was also pro-coup", "You can't teach me how to trade – what do you know, you're just a woman", "They were too obscurantist", "Don't be fooled by their meek appearance; you can expect anything from them", "Leave me you scum bag", "Why did you even leave your cage?", "Child marriage", "Depriving children of their right to education", "The chief physician is under the influence of certain organizations".<sup>222</sup>

In light of these examples, it would not be an exaggeration to argue that RTÜK's decisions serve a protective role for Islamic communities and *tarikats*.

## 4.2.2 Rulings of the Council of State

The decisions of the Council of State can be examined under two topics: one focusing on the most common reasons for sanctions, and the other providing examples of specific decisions.

216 İ. Özgür, "İmam Hatip Okulları: İnanç, Siyaset ve Eğitim", Kitap Yayınları, 2015.

217 RTÜK, T. No: 2019/16, K. No: 37, 10 April 2019.

218 A fine of 17,065 TL was imposed. RTÜK, T. No: 2018/52, K. No: 19, 26 December 2018.

219 See: [Guidelines on the Legal Personality of Religious or Belief Communities](#), OSCE/ODIHR.

220 See: T. Şirin, "Devrim Kanunları: Laikliğin Koruyucu Kirişlerinin Hâl-i Pürmelali", Cumhuriyet'in 100. Yılında Anayasa Hukuku Tartışmaları, Sultan Tahmazoğlu Üzeltürk ve Fatmagül Yazıcı (ed.), On İki Levha Yay., 2024, p. 94 ff.

221 Ö. Şen, "Türkiye'de Laiklik ve Sol", Yazılama Yay., 2016.

222 A fine of 9,082,640.00 TL was imposed. RTÜK, T. No: 2023/51, K. No: 36, 28 December 2023.

## Grounds for interference with the freedom of expression

The legal basis for restricting freedom of expression in the context of administrative law is, in principle, the Law on Civil Servants No. 657. **Specifically, under Article 125 on "Types of disciplinary penalties and acts and situations to be punished", the offence of "engaging in acts in a quality and degree that are incompatible with the title of civil servant", warrants a penalty that can be considered a general threat to freedom of expression.**

### Examples from administrative case law

Insulting religion or religious beliefs is not a frequent matter in administrative justice. Rulings addressing this issue typically arise in the context of RTÜK decisions or cases involving civil servants. However, as annulment cases concerning RTÜK decisions are not transparently accessible, conducting a comprehensive analysis on this subject is not feasible.

In the realm of civil service law, the issue typically emerges in three sub-contexts:

1. the imposition of disciplinary sanctions following a criminal court conviction;
2. the imposition of disciplinary sanctions for acts committed by civil servants during the course of their duties;
3. disciplinary sanctions directly imposed by the administration for certain off-duty conduct, without any criminal proceedings or convictions.

**Disciplinary sanctions following a criminal court conviction** - Given the limited discretion in such cases, it is not surprising that administrative courts have withheld in-depth assessments. Nevertheless, available examples from the limited rulings do help illuminate the issue.

In one case, the plaintiff had made the following social media posts at different times in 2014: "The one who created God committed the greatest sin. The vicious circle of Islam – I wonder when they will realise this cycle", "Those who mock idolaters are idolaters themselves", and "Allah is also a god – don't forget that the word 'god' refers not to divinity but to all beings that are said to be divine – the ox is a god to those who worship the ox."

A criminal case was filed regarding these statements, resulting in a sentence of nine months and 10 days of imprisonment, which was converted into a judicial fine. Subsequently, the administration declined to renew the plaintiff's civil service contract, attributing the decision to damage to the trust and reputation expected of a civil servant. In the lawsuit filed against this decision, the court found no unlawfulness in the administration's refusal to renew the civil service contract.<sup>223</sup>

A more striking example involves a civil servant sharing the following statement via WhatsApp in 2018: "Those who add vulgarity to their mediocrity by organizing a parade of 1453 trucks attempt to atone for their sins with the words, 'We have

<sup>223</sup> A fine of 5600 TL was imposed. The 1st Administrative Court of Aydın, E 2023/176, K. 2023/1033, 14 September 2023.

betrayed nature.' The supporters of those who admit their betrayal in the evening go on to establish yet another construction site by morning, wreaking havoc on nature. Meanwhile, the resulting disasters lead to devastating consequences."

These remarks, along with similar statements, were deemed "disgraceful and embarrassing acts in a quality and degree that are incompatible with the title of civil servant", and a dismissal of the individual from civil service was upheld.<sup>224</sup>

**Disciplinary sanctions for civil servants' acts in the course of duty** - This issue is particularly prominent in cases involving teachers. One noteworthy example involves a high school teacher of religious culture and ethics in Izmir, who was investigated and sanctioned for their extracurricular remarks. The investigation launched against the teacher centred on the following allegations:

"The teacher stated that circumambulation is not obligatory in pilgrimage, the Kaaba is idolized, sacrifice is akin to murder, the Quran cannot be understood in Arabic, the Prophet was addressed by his first name, the headscarf in Islam is an Arab tradition, male circumcision is not mentioned in the Quran, a marriage is valid with mutual consent between a man and a woman, alcohol can be consumed as long as it is not intoxicating, and such consumption would not be considered haram. The teacher also mentioned personally consuming alcohol in non-intoxicating amounts, believing the Quran is deist, and that several Islamic scholars share this view (...)"

The investigation concluded that the teacher had strayed from the curriculum and adopted unconventional methods, such as assigning high grades arbitrarily, allowing students who did not wish to participate to sleep or have breakfast, among other deviations. Consequently, it was decided to change their service class and cadre title, and they were appointed as a general civil servant. When the case was taken to the Administrative Court for annulment, the court found no legal violation in the administration's decision.<sup>225</sup>

**Disciplinary sanctions by the administration for certain off-duty conduct, without any criminal proceedings or convictions** - The rulings available on this matter warrant criticism. One such case involved an administrative investigation concerning remarks made by a faculty member, posted on their Twitter account in 2018: "Astroturf games at night are forbidden. Weddings are prohibited. Any noise that could disturb the neighbourhood is prohibited. Great. But why is the loud *ezan* [call to prayer] permitted at this hour of the night? What a contradiction." The court considered these remarks to fall within the scope of "discrimination based on language, race, colour, gender, political thoughts, philosophical beliefs, religion and sect and acting contrary to the requirements of duty and acting in a manner aimed at benefiting or harming individuals while carrying on duties", and ruled that the suspension of rank progression and multiple wage deductions were in accordance with the law.<sup>226</sup>

<sup>224</sup> The 10th Chamber of the Council of State, E. 2020/4415, K. 2023/5871, 20 November 2023.

<sup>225</sup> Regional Administrative Court of İzmir, the 1st Administrative Judicial Chamber 2021/649, K. 2021/650, 16 February 2021.

<sup>226</sup> The 8th Chamber of the Council of State, E. 2021/4565, K. 2023/7709, 22 December 2023.

### 4.4.3 Rulings of the Court of Cassation

The Court of Cassation has jurisdiction over both criminal and civil cases; however, it appears to primarily handle criminal cases. As a result, this section focuses on the criminal law aspect.

#### Grounds for interference with freedom of expression

The provisions referenced in the rulings of the Court of Cassation are mainly set out in the Turkish Criminal Code. The central norm under consideration is Article 216 on "Provoking the Public to Hatred, Hostility or Degrading". The first paragraph of this article pertains to religious hate speech, while the final paragraph regulates acts that involve insulting religious values. It appears that the second paragraph is also pending application as a supplementary measure, contingent upon the circumstances of the specific case.

Additionally, Article 125 becomes relevant when the insult is specifically directed at an individual. Sub paragraphs (b) and (c) of paragraph 3 of this article are of a "religious" nature and are regarded as qualified forms of the offence of insult.

Another offence that may be relevant is "damaging places of worship and cemeteries" as set out in Article 153 of the TCK. Although this is typically associated with vandalism, such acts can, in certain contexts, be viewed as a form of expression, making the provision relevant.<sup>227</sup>

#### Insulting religious values

The offence of insulting religious values primarily pertains to the religious values "of a section of the public". Insults directed at the religious values of an individual or those not adopted by any segment of the public do not qualify as grounds for this offence.

The provision does not define "religion" or "religious value", leaving room for interpretation regarding the scope of protection. During the period of the repealed TCK, the General Criminal Chamber of the Court of Cassation had stated that the offence aimed to protect religious feelings.<sup>228</sup> This interpretation has since evolved in scholarly commentary to suggest that the current TCK seeks to protect freedom of religion or belief.<sup>229</sup> However, there are important reasons to approach this view with caution. It is debatable whether the protection of religious feelings is a component of the freedom of religion or belief. The offence is not regulated under the section on "Deprivation of Liberty". There is a clear difference in the ultimate purpose (*telos*).

The offence in the provision is not insulting religion but insulting religious values. As the definition of "religion" remains highly controversial, the concept of "religious value" introduces even greater ambiguity. Determining what constitutes a religious value is primarily the task of theologians, making it inappropriate for judges to make

<sup>227</sup> *Murat Vural v. Türkiye*, App. No. 9540/07, 21 October 2014, para. 66-67.

<sup>228</sup> The Court of Cassation, General Assembly of Criminal Chambers, K. 160/64, 9 February 1948.

<sup>229</sup> M. E. Artuk and M. E. Alşahin, "Dini Değerleri Aşağılama Suçu (TCK m.216/3)", Prof. Dr. Ali Rıza Okur'a Armağan, MÜHFHAD, 2014, p. 989-1012.

such assessments without consulting theological sources. This highlights the importance of expert reviews. While consulting religious scholars or judges who draw on their personal religious knowledge may be acceptable in non-secular states, it is inadmissible in a secular state.<sup>230</sup> For this reason, such categories of offences are not recognised in secular states, particularly in France.<sup>231</sup>

Another significant concept in the context of insulting religious values is "denigration". In the explanatory notes to the TCK, denigration is defined as "acts and actions aimed at decreasing respect towards values mentioned in the article".

In the accessible rulings of the 8th Criminal Chamber of the Court of Cassation, it is generally observed that cases in which the court identified the presence of denigration often involve the use of vulgar language and sexual elements. One such example is a case brought against a defendant for remarks shared on Facebook:

"Splitting the sea, turning the staff into a snake, a virgin giving birth, eating an apple and being cast out... These are all complete nonsense, it is more likely these stories were fabricated rather than being sent from the heavens... Yet, they passed them off as the word of God... Just made up verses as they wished... It's shameful that people fail to realise they are being deceived by an ignorant and primitive Arab from the seventh century, it is foolish not to recognise this deception... The immorality of these so-called prophets should be exposed."

In this instance, the court ruled that these remarks constituted "derogatory and insulting statements directed at Islam and its sanctities, which are embraced by a large segment of the public" and determined that there was potential to provoke widespread outrage and disproportionate reactions. As a result, the defendant was sentenced to 7 months and 15 days in prison.<sup>232</sup>

Another case, also involving Facebook posts, concerned the defendant's remarks: "God was preoccupied with Mohammed's lust, as if there was nothing else for him to do. That is why I don't feel like reading it." The post was followed by a laughing emoticon and a quoted verse: "It is up to you to delay or receive whoever you please of your wives. There is no blame on you if you call back any of those you have set aside. (Surah Al-Ahzab, Ayat 51)." The court concluded that the offence of publicly insulting the religious values embraced by a large segment of society, where the majority are Muslims, had been committed, and the defendant was sentenced to 7 months and 15 days in prison.<sup>233</sup>

Under the provisions of the now-abrogated TCK No. 765, the Court of Cassation held that the offence of insulting religious values required specific intent rather than general intent.<sup>234</sup>

<sup>230</sup> See above 169, p. 540.

<sup>231</sup> Countries in Europe that foresee the above mentioned crime categories: <https://end-blasphemy-laws.org/countries/europe/>.

<sup>232</sup> The 76th Criminal Court of First Instance of Istanbul 2015/592, K. 2016/155, T. 17/03/2016.

<sup>233</sup> The 9th Criminal Court of First Instance of Izmir 2022/769, K. 2022/850, 15 December 2022.

<sup>234</sup> See above 229, p. 1002.



Even when an act of insulting a sacred value is directed at an individual, meaning that the TCK's Article 125(3/c) would apply instead of its Article 216(3), the Court of Cassation has maintained that the intent of the accused must still be examined.

This is particularly evident in cases involving insults expressed as curses. For instance, under the repealed TCK, the Criminal General Assembly of the Court of Cassation dealt with a case in which two individuals, during an argument in a coffee house, cursed at each other using the phrases: "Curses to your religion, your belief, your book, your Allah!" According to the assembly, since the defendants did not specifically intend to insult "Allah, the book, or religion", nor were they targeting these institutions or concepts, the prosecution fell under the offence of "public cursing" arising from a dispute, and the provision on the offence of insulting sacred values was not invoked.<sup>235</sup>

Under the current TCK No. 5237, the Court of Cassation continues to emphasise the need for examining intent in both the basic and qualified forms of the offence of insult.<sup>236</sup>

According to the Court of Cassation, in cases where the statements in question do not amount to cursing but instead represent criticism, specific intent must be separately assessed, with the involvement of a qualified panel of experts. A notable example is the case involving Prof. Dr. İlhan Arsel, a constitutional law scholar known for his criticisms of Islam, and his publisher Hikmet Ersavaş. They faced accusations that Arsel's book, "*Şeriat ve Kadın*" (Sharia and Women), insulted sacred values.<sup>237</sup> Despite the absence of a clause in the relevant TCK provision explicitly requiring motive – and thus allowing general intent to suffice – the Court of Cassation ruled that the intent to insult religious values must be evaluated, and if necessary, an expert panel's opinion should be sought.<sup>238</sup> This approach can be seen as significant in favour of freedom of expression.

The aim of regulating the offence of insulting religious values is to preserve public peace. The Court of Cassation does not deem it sufficient for an individual to insult religious values embraced by a particular segment of society. It further asserts that the insult must be made "publicly" and, crucially, does not conclude that any public insult inherently disrupts the public peace. Consequently, this element must be thoroughly examined and, if present, justified. A case illustrating this involved a defendant who posted the statement, "Hazar Omar, messenger of Allah, said that a man shall not be questioned about the reasons for beating his wife", alongside an image of a beaten woman on Facebook. The defendant also remarked, "Maybe you're at prayer, or with one of your wives you've taken under Islamic law. All of you should f... off to Mecca where your idol is." Upon reviewing the defendant's appeal

<sup>235</sup> The Court of Cassation, General Assembly of Criminal Chambers, E. 2000/4-116, K. 2000/121, 30 May 2000.

<sup>236</sup> The basic form (Article 125/1) and the qualified form (125/3-c). The 2nd Criminal Chamber of the Court of Cassation, E. 2011/25588, K. 2013/4148, 28 February 2013. For several examples, see: The 2nd Criminal Chamber of the Court of Cassation, E. 2011/7335, K. 2012/45806, 13 November 2012; the 2nd Criminal Chamber of the Court of Cassation, E. 2013/14475, K. 2014/5051, 25 February 2014.

<sup>237</sup> İ. Arsel, "*Şeriat ve Kadın*", Kaynak Yayınları, 2017.

<sup>238</sup> The 4th Criminal Chamber of the Court of Cassation, E. 1996/1676, K. 1996/6424, 10 July 1996. For a divergent approach, see: the 4th Criminal Chamber of the Court of Cassation, E. 2010/29907, K. 2012/20342, 11 October 2012.

against a 4,000 TL judicial fine, the Court of Cassation ruled that "the judgement is unlawful as the court failed to adequately explain and discuss how the defendant's posts were likely to disturb public peace."<sup>239</sup>

Additionally, the Court of Cassation assesses the condition of "the potential to disturb public peace" using the criteria of "explicit, imminent and serious danger". In this context, the Court considers the relationship of the speech to the exercise of freedom of expression and evaluates whether the speech "incites violence or promotes it".<sup>240</sup> However, it should be noted that this criterion is not consistently applied in all cases, and there remains a degree of arbitrariness in this regard.<sup>241</sup>

## Religious hate speech

Religious hate speech is regulated under Article 216(1) of the TCK. According to the 8th Criminal Chamber of the Court of Cassation, the primary objective of this provision is to limit hate speech.<sup>242</sup> While the Court of Cassation's perspective in the cited ruling appears to align with the case law of the ECtHR and international human rights standards, there are concerns about how effectively these principles are applied to specific cases. These concerns cannot be adequately assessed due to the lack of transparency and verifiability in the rulings of the Court of Cassation.

As some of the verifiable data can be found in the rulings of the AYM, it can be concluded that it is possible to talk about the existence of abuses on the basis of this jurisprudence.<sup>243</sup>

### 4.4.4 Rulings of the Constitutional Court

**The rulings of the Constitutional Court are both verifiable and aligned with international human rights standards, making them the most reasonable stance among high court rulings.**

A notable ruling is the case of *İhsan Taş*, where the applicant was sentenced to 10 months' imprisonment under the TCK 216(3), with the announcement of the judgment postponed.<sup>244</sup> The applicant had posted several statements on Facebook, including: "made-up religion", "Allah is a big lie", "all countries are invaded, their men slaughtered, and their women and girls turned into sex slaves. This is the only truth about Islam", "All Muslims are idiots without any exception", "All (...) Muslims are potential murderers", "... The made-up figures of the history of religions, such as Yusuf".

In this decision, the AYM emphasised that one of the legal values protected by Article 216(3) of the TCK is "the other people's right to freedom of religion and conscience".<sup>245</sup> The indictment specifically highlighted expressions such as "made-up

<sup>239</sup> The 8th Criminal Chamber of the Court of Cassation, E. 2023/663, K. 2023/2510, T. 26 April 2023.

<sup>240</sup> The 8th Criminal Chamber of the Court of Cassation, E. 2014/35434, K. 2015/22535, 12 October 2015.

<sup>241</sup> See: The 8th Criminal Chamber of the Court of Cassation, E. 2022/4198, K. 2024/120, 10 January 2024.

<sup>242</sup> The 8th Criminal Chamber of the Court of Cassation, E. 2021/6697, K. 2023/8986, 22 November 2023.

<sup>243</sup> AYM, *Hakan Aygün*, App. No: 2020/13412, 12 January 2021, para. 65-67.

<sup>244</sup> AYM, *İhsan Taş*, App. No: 2014/11255, 21 November 2017, para. 10.

<sup>245</sup> *Ibid.*, para. 34.

religion", "All Muslims are idiots without any exception", and "Muslims are potential murderers", with the courts of first instance concluding that these statements insulted Islam. The AYM agreed with this conclusion, finding the interference to be proportionate as the applicant had not acted in accordance with his duties and responsibilities while exercising freedom of expression, and the sanction, which involved the postponement of the judgment's announcement, was deemed appropriate.<sup>246</sup> This ruling shows the AYM's divergence from the Council of Europe's call to abolish blasphemy as a criminal act, although it does not fall behind the ECtHR's restrictive position.

The Court found violations in all cases, aside from the exceptional ruling mentioned. For example, in the case of *Mehmet Emre Döker*, the defendant was investigated for remarks made under the topic "Hazrat Muhammad" on the Ekşi Sözlük website: "See: Caveman, Edit: Click and read before giving a bad rating. Did I say anything wrong? (...) Don't make everything a taboo, he's a better caveman than I am (...) Above all, he is a human being, just like the rest of us (...)"

Following a complaint, the Istanbul Anatolian Chief Public Prosecutor's Office issued an indictment on 29 July 2013, seeking punishment for publicly insulting religious values adopted by a particular section of the society. Notably, the indictment did not include other individuals who had commented on the same website, aside from the applicant.

On 15 May 2014, the court decided to postpone the prosecution of the defendant under the provisions of Law No. 6352 of 2 July 2012, titled "Amendment of Certain Laws for the Efficiency of Judicial Services and the Postponement of Actions and Penalties for Crimes Committed through Media", as the post in question had been shared before 31 December 2011. When the case reached the AYM, the Court found that the postponement also interfered with freedom of expression, ruling that the decision violated the necessity criterion in a democratic society.<sup>247</sup>

In the case of *Ufuk Çalışkan*, the applicant was the responsible editor of the BirGün newspaper's website. The newspaper's editorial board had decided to feature articles from popular Twitter accounts and had reached out to several users, including the pseudonymous @tanrıcc (@god). Two articles by this individual were published in two editions of the newspaper and on its website. The 2nd Criminal Court of First Instance of Istanbul sentenced the applicant to 7 months and 15 days' imprisonment under Article 216(3) of the TCK for articles in which the author portrayed God speaking in the first person.<sup>248</sup>

The AYM noted that the articles in question were satirical critiques of Türkiye's social and political situation. It further found that when examined in context, the articles expressed dissatisfaction with the state's administration, contributing to public debate. The Court, recognising that the articles contributed to public debate, concluded that although the texts may appear offensive to individuals belonging to

<sup>246</sup> *Ibid.*, İhsan Taş, 2017, para. 45-48.

<sup>247</sup> AYM, *Mehmet Emre Döker*, App. No: 2015/486, 19 September 2018, para. 51-54. Kadir Özkaya voted against, stating that there was no "interference" in the specific case.

<sup>248</sup> AYM, *Ufuk Çalışkan*, App. No: 2015/1570, 07 March 2019, para. 13.

monotheistic religions at first glance, they did not contain expressions that were unjustifiably hurtful, aggressive, or inappropriate for others. The Court also noted that although the requests for action from citizens, based on letters of complaint, suggested that the writings in question could potentially disturb public order, there was no concrete evidence of a threat substantial enough to justify imposing a sanction on the applicant. In light of these considerations, the Court ruled that the imposition of a 7-month and 15-day prison sentence, even though postponed, was insufficiently justified as a necessary measure and violated freedom of expression due to its deterrent effect.<sup>249</sup>

#### 4.4.5 Investigations and judicial harassment

One of the most prominent concepts in recent human rights law is "judicial harassment". Judicial harassment refers to the repeated use of civil, criminal, or administrative legal actions against individuals whose views are regarded as intolerable, dissenting, or oppositional by state authorities. The aim of such practices is to intimidate or silence these individuals by subjecting them to prolonged legal proceedings that disrupt their lives and impede their work.

It can be argued that many individuals who hold non-mainstream religious views or whose beliefs do not align with the political agenda are subjected to such harassment. **In numerous high-profile cases, Article 216(3) of the TCK, concerning blasphemy, becomes the focal point of investigations. Even when these investigations do not result in a trial or criminal sanction, they continue to exert a chilling effect on both the individual and society at large.**

The data collected from reviewing national media sources on investigations initiated under Article 216(3) of the TCK supports this observation. Some of these investigations have ended in dismissals, some in acquittals, others in the postponement of verdicts, while some are still ongoing.

##### **Prominent examples from recent history related to judicial harassment:**

- the remarks of a character in Nedim Gürsel's novel "*Allah'ın Kızları*" (The Daughters of Allah);<sup>250</sup>
- the expressions in Metis Publishing's agenda titled *İllallah!*, including statements like "The happiness of a believer, compared to that of a sceptic, is like the happiness of a drunk compared to a sober person", and "The happiness brought by faith is both cheap and dangerous";<sup>251</sup>
- Fazıl Say's tweet quoting Omar Khayyam: "You say rivers of wine flow in heaven, is heaven a tavern to you? You say two huris await each believer there, is heaven a brothel to you?" along with his remark "Have you noticed that all scoundrels, vile gossipmongers, thieves, and buffoons are devoutly religious? Is this a paradox?";<sup>252</sup>

249 AYM, *Ufuk Çalışkan*, 2019, para. 51-59.

250 Bianet, "Roman Karakterlerine Dava ve Nedim Gürsel'in 'Allah'ın Kızları'", 2 May 2009.

251 Türkiye Yayıncılar Birliği, "Ajanda davasına devam", 12 June 2012.

252 T24, "Cennet meyhane mi, kerhane mi?", 6 April 2012.

- the publication of Charlie Hebdo's cartoons (linked to the ISIS attacks) in Cumhuriyet newspaper by journalists Ceyda Karan and Hikmet Çetinkaya;<sup>253</sup>
- cartoonist Bahadır Baruter's inclusion of the phrase "There is no God, religion is a lie" in a mosque illustration;<sup>254</sup>
- former CHP Izmir Deputy Provincial Chair Banu Özdemir's sharing the videos of song "Bella Ciao" being broadcast from mosques;<sup>255</sup>
- a student protest at Boğaziçi University placing a poster that depicted the Kaaba on the ground;<sup>256</sup>
- Sözcü newspaper's headline describing the reopening of Hagia Sophia for worship as a disaster;<sup>257</sup>
- the press statement by İzmir Bar Association President Özkan Yücel and the İzmir Bar Association Executive Board condemning the speech of the president of the DİB during a khutbah on "Training of Patience and Willpower", claiming it contained hate speech and discrimination against LGBTI+s and those living with HIV;<sup>258</sup>
- a Pegasus Airlines employee sharing a social media post featuring alcohol with the caption "Special for the Night of Decree".<sup>259</sup>

When considered alongside the tolerance shown towards Sharia propaganda (following the repeal of the former Article 163 of the TCK and the authorities' leniency on this matter),<sup>260</sup> these examples highlight a double standard in relation to freedom of expression in Türkiye. While Sharia propaganda against the secular Republic is granted full liberty, there is a clear intolerance towards criticism of Sharia, political Islam (Islamism and the exploitation of religion), or religion in general. This double standard not only curtails freedom of expression and public debate but also undermines the freedom of religion or belief.



### Intolerance (even) towards criticism expressed by Muslims

The issue of prohibitions on religious criticism in Türkiye is not confined to critiques of Islam or Muslims alone. For example, a Koran instructor working for the DİB was dismissed from their position due to their critical stance towards the government. This dismissal was based on a provision in the DİB's Appointment and Relocation Regulation, which stipulates that the person must be known as someone whose "beliefs, worship, behaviour and practice is known to be in compliance with the tra-

253 Sputnik, "Ceyda Karan ve Hikmet Çetinkaya'ya 2'şer yıl hapis", 28 April 2016.

254 SolHaber, "Baruter ilk değil: Dini doğmaya dokunan linç ediliyor", 16 February 2011.

255 BBC Türkçe, "İzmir'de camilerden Çav Bella çalınmasını paylaşan CHP üyesinin tutuklanması hakkında neler biliniyor, CHP neden eleştiriyor?", 22 May 2020.

256 Sendika, "Boğaziçi'nde 'dini değerleri aşağılama' gerekçeli operasyon: 5 üniversiteli gözaltına alındı", 30 January 2021.

257 Sabah, "Sözcü'nün o manşetine dava: Dini değerleri alenen aşağıladılar", 3 June 2021.

258 Herkes Susma Biz Susmayacağız", İzmir Barosu Bülteni, p. 233, 2022.

259 T. Şirin, "Ey zahit, şaraba eyle ihtiram: Pegasus olayı", T24, 3 May 2022.

260 From calls for Sharia within courthouses to the defence of pro-Sharia rhetoric at the highest levels of state leadership; from accusations of Santa Claus being a paedophile to parodies of circumcision; from the frequent use of the term "atheist" by authorities as synonymous with deviance to the pejorative use of "profane" in derogatory contexts, numerous examples illustrate the existence of a double standard.

ditions of Islam". Additionally, Article 8 of the Law on Civil Servants, which states that "in their conduct in and outside the service, civil servants shall demonstrate that they are worthy of the respect and reliability which their official ranks require", also served as a basis for the decision.<sup>261</sup>

Another instance involves some Muslim women facing sanctions or harassment under Article 216(3) of the TCK for their social media posts, which criticized prevalent misogynistic rhetoric in society by reversing certain hadiths in Islam.

These examples indicate that this issue is not merely about religious favouritism but also reflects a broader alignment with political discourse.<sup>262</sup> It appears that when such views are expressed by women, the intensity of horizontal harassment (often supported by the government) escalates.

#### 4.5 Conclusion

International human rights law differentiates between hate speech and blasphemy or criticism of religion. In this context, hate speech, viewed as a form of violence and discrimination, falls outside the scope of protection under freedom of expression. "Falling outside the scope" means that even expressions which, under normal circumstances might meet the standards of freedom of expression, are not subject to examination.

However, this assessment does not apply to blasphemy or defamation of religion. **Religion itself does not enjoy special protection under human rights law. Within a legal framework, especially in a secular state system, it is not possible to grant direct protection to religion. Instead, it is the freedom of religion or belief that is protected.**

In this context, a significant aspect of freedom of religion or belief is its connection to "religious feelings". There are varying perspectives on whether religious feelings should be considered part of freedom of religion or belief. However, it is neither practical nor necessary to protect the multitude of subjective feelings tied to numerous religions. A consistent approach would necessitate the protection of non-religious feelings as well. If this were the case, the state would have positive obligations to protect the emotional distress of individuals, including "love-sick" individuals, those whose hearts are broken due to unkind treatment, or those suffering from other emotional turmoil. State involvement in all types of relationships, to the extent of protecting emotions, particularly when it is used to restrict freedom of expression, presents a significant risk to the democratic order.

For this reason, **both the UN and the Council of Europe stress the importance of removing "religious feelings" from legal frameworks.** The ECtHR's jurisprudence on this matter is somewhat divergent. In addition to envisioning the protection of religious feelings within the scope of freedom of religion or belief, the ECtHR also recognises that rationales beyond religious hate speech, such as the safeguarding

<sup>261</sup> M. Yıldırım, "An Appeal to Move Forward from Aspirations to Actions: Monitoring Report on the Right to Freedom of Religion or Belief in Turkey", Freedom of Belief Initiative, 2022.

<sup>262</sup> For these cases, see *Ibid.*, p. 64.

of religious peace, may constitute a permissible limitation on freedom of expression. This controversial stance introduces additional problems in the Court's jurisprudence. In cases involving conflicts between freedom of religion or belief and freedom of expression, the ECtHR distinguishes between "factual statements" and "value judgments" when evaluating cases of insult. Factual statements are subject to a strict burden of proof, whereas value judgments are subject to a lighter standard. However, for atheists or non-believers, religion is often considered a value judgment, and requiring factual evidence for historical religious events may be unjust. Furthermore, relying on religious authorities in such cases could undermine the principle of secularism. As previously noted, the standards set by the UN and the Council of Europe are higher than those of the ECtHR. As a party to the UN ICCPR, Türkiye is obligated to adhere to the UN's standards, which is no less important than its obligation to comply with the ECHR. It is unacceptable for Türkiye to choose the lower of these two standards.

Despite these criticisms, international human rights law is recognised for establishing a certain standard. While this standard does not entirely disregard religions or their believers, it places greater emphasis on safeguarding freedom of expression, particularly when it comes to religious criticism. **Special Rapporteurs highlight that arbitrary restrictions on expressions regarding religions or beliefs and their believers not only undermine freedom of expression but also the freedom of religion or belief.**

In the context of Türkiye, the protection of religious feelings through criminal legislation is seen as falling short of international standards. **In Türkiye, attacks or criticisms directed at religion, or elements and practices that are emotionally sensitive to its believers, are sometimes subject to criminal sanctions even in cases where they do not escalate into hate speech or present an explicit, imminent threat to public peace.** The application of Article 216(3) of the TCK, in particular, exerts a chilling effect on the expression of religious criticism. Moreover, the practices of the RTÜK are often deemed arbitrary, diverging significantly from international human rights norms, and conducive to censorship.

While the decisions of the Council of State and the Court of Cassation are not as problematic as those of the RTÜK, and their principled findings appear appropriate, deviations from mainstream jurisprudence in certain individual cases have created a legal minefield.

The AYM, despite issuing rulings that align most closely with international human rights standards, also mirrors the ECtHR's controversial stance on religious criticism within its own jurisprudence.

**One of the most pressing issues in Türkiye today is the ease with which all forms of religious criticism are subjected to investigation or prosecution.** Even when non-prosecution or acquittal verdicts are issued, these proceedings often amount to what can be characterised as "judicial harassment". Islam, rather than religion in general, and especially Sunni Islam, is afforded special protection. This broad latitude given to Sharia and Islamist propaganda poses a crisis for the secular state

principle. As emphasised in documents from the UN framework, and as reflected in the title of this study, this double-standard approach undermines not only freedom of expression but also freedom of religion or belief, triggering a backlash effect. The flawed implementation of principles designed to maintain public peace exacerbates religious conflicts and significantly intensifies polarization.

To address this, state institutions and their representatives must avoid being perceived as biased or prejudiced toward any religion or belief. Additionally, the following concrete recommendations for public authorities may prove useful in safeguarding both freedoms.

#### RECOMMENDATIONS FOR LEGISLATIVE AND POLICY MEASURES

- In line with the Venice Commission's observations, Article 216 of the TCK should not be applied to punish blasphemy or religious insults. In this article's phrase, "A person who publicly degrades the religious values of a section of the public shall be sentenced to a penalty of imprisonment for a term of six months to one year, where the act is capable of disturbing public peace", the actual act that "is capable of disturbing public peace" should be defined as "the act that poses a danger of violence, threats, or disorder against a disadvantaged segment of society." Alternatively, the criterion "the act must pose an explicit and imminent danger" could be added.
- Instead of criminal cases being filed for expressions against religious values, alternative sanctions such as reconciliation and community service should be applied. This approach could reduce the judiciary's workload and promote restorative justice.
- A guideline should be prepared to encourage careful discourse, without limiting freedom of expression, focused on religious sensitivity in public speeches or written statements.
- Amendments should be made to Article 125 of the Civil Servants Law No. 657 to protect freedom of expression.
- Additions should be made to Article 8 of Law No. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services to include safeguards for freedom of expression.
- RTÜK should be restructured in a pluralistic manner, ensuring that the Grand National Assembly of Turkey selects members by qualified majority.
- The forthcoming Human Rights Action Plan should include the goal of reviewing legislation to fully protect freedom of expression and freedom of religion or belief.

#### RECOMMENDATIONS FOR THE JUDICIARY

- The AYM's case law should be preserved and adopted by other judicial bodies. ECtHR standards should be accepted as a minimum threshold, and the decisions of the UN and other Council of Europe bodies should also be incorporated into case law.
- All judicial decisions in the National Judiciary Informatics System should be made publicly available free of charge (or, as an initial step, made available to researchers upon request) with a functional search engine to systematically track judicial decisions.



## RECOMMENDATIONS FOR EDUCATION AND CAPACITY BUILDING

- Specialised training on international human rights standards set forth by the UN ICCPR and the ECHR should be provided for members of the judiciary. Capacity-building should focus on the compatibility of blasphemy/religious insult laws and their application with freedom of expression, thought, conscience, and religion or belief.
- Training should be provided to strengthen the capacity of national human rights institutions, enabling them to offer recommendations on legal reforms related to freedom of thought, conscience and religion or belief and to effectively handle complaints and investigations.
- Wide-reaching training programmes should be organised, involving religious leaders and opinion leaders, to raise awareness about freedom of expression, the culture of criticism, and pluralism.



inanç  
özgürlüğü  
girişimi



Norwegian  
Helsinki Committee

**A HUMAN RIGHTS PERSPECTIVE ON THE MULTI-FACETED  
RIGHT (NOT) TO BELIEVE IN TÜRKİYE**



[www.inancozgurlugugirisimi.org](http://www.inancozgurlugugirisimi.org)